L O C A L R U L E S O F P R A C T I C E

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

Forward

The Board of Judges for the Northern District of New York have adopted the following time schedule for the approval and amendment of the Local Rules of Practice. The Court will solicit comment on new and amended local rules from the bar and public during the months of July, August and September. Comments should be addressed to:

Lawrence K. Baerman
Clerk of Court
James Hanley Federal Building
P.O. Box 7367
100 South Clinton Street
Syracuse, New York 13261-7367

New and amended rules of practice will be forwarded to the Circuit Council of the Second Circuit for review and approval during the month of October. All new and amended local rules will become effective on January 1st each year. The Clerk of the Court will then make available to the bar and public the amended local rules.

Please note that the Court's Local Rules and General Orders may be obtained from the Court's web page at "www.nynd.uscourts.gov".

SUMMARY OF AMENDMENTS EFFECTIVE JANUARY 1, 1999

Local Rule	Description of Modification
1.1(e)(7)	Eliminated reference to Civil Justice Reform Act (CJRA)
3.2	Eliminated reference to Civil Justice Reform Act (CJRA); Venue to be controlled by Civil Case Assignment Plan.
3.3	Eliminated reference to Civil Justice Reform Act (CJRA); Added language to allow the judges to determine if a case requires complex litigation status.
4.1(b)	Eliminated reference to Civil Justice Reform Act (CJRA); Added language regarding service of process under General Order 25.
5.4	Incorporated language concerning the Prison Litigation Reform Act and General Order 49.
7.1	Modified rule to clarify motion procedure. More specifically, reformatted rule to include a table of contents as well as a more detailed description of what is to be included in the Statement of Material Facts.
10.1	Modified to provide a clear and detailed description of the necessary "form of papers" and required information.
14.1	Cross referenced Local Rule 7.1(a)(4).
15.1	Cross referenced Local Rule 7.1(a)(4).
16.1	Eliminated reference to the Civil Justice Reform Act; Added language to incorporate case management requirements.
18.1	Cross referenced Local Rule 7.1(a)(4).
19.1	Cross referenced Local Rule 7.1(a)(4).
20.1	Cross referenced Local Rule 7.1(a)(4).
26.2	Eliminated requirement that Prisoner Civil Rights cases must file discovery.
26.3	Eliminated reference to the Civil Justice Reform Act; Added language regarding production of expert witness information.
26.4	Exempted incarcerated parties from the requirements of Fed. R. Civ. P. 26(d) and (f), (discovery prior to conference and "meet and confer" requirements.)
29.1	Cross referenced Local Rule 16(1)(f); Eliminated reference to Civil Justice Reform Act.

Local Rule	Description of Modification
38.1(b)	Added language concerning jury trial requests when case is removed from state court.
39.2	Eliminated reference to Civil Justice Reform Act.
40.1	Eliminated reference to Civil Justice Reform Act.
40.3	Eliminated reference to Civil Justice Reform Act.
41.2(b)	Cross referenced 10.1(b)(2).
47.1	No substantive changes; Eliminated reference to Title 28 and General Order 24.
51.1	Eliminated reference to Civil Justice Reform Act.
52.1	Eliminated reference to Civil Justice Reform Act.
72.1	No substantive changes; Provided cross references to other Local Rules.
72.2	No substantive changes; Provided cross references to other Local Rules.
72.3	Provided cross references to other Local Rules; added language on referral of prisoner cases to Magistrate Judges; Eliminated reference to Civil Justice Reform Act.
72.5	New Local Rule on Habeas Death Penalty Actions.
83.1	Admission Rule rewritten to clarify admission requirements and procedures.
83.2	Added language on the impact of the withdrawal of counsel on pretrial deadlines.
83.3	Rule on Pro Bono Panel rewritten to clarify counsel's responsibilities.
83.13	New Rule on sealed matters.
Criminal Rule 12.1	New Rule on sealed matters.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

(As Amended January 1, 1999)

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IX. DISTRICT COURT AND CLERKS (continued)

X. ALTERNATE DISPUTE RESOLUTION AND GENERAL PROVISIONS

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SECTION I.
SCOPE OF THE RULES
ONE FORM OF ACTION

1.1 Scope of the Rules. (Amended January 1, 1999)

(a) Title and Citation.

These are the Local Rules of Practice for the United States District Court for the Northern District of New York. They shall be cited as "L.R.___."

(b) Effective Date; Transitional Provision.

These Rules became effective on **January 1, 1999.** Recent amendments are noted with the phrase (Amended January 1, 1999).

(c) Scope of the Rules; Construction.

These Rules supplement the Federal Rules of Civil and Criminal Procedure. They shall be construed so as to be consistent with those Rules and to promote the just, efficient and economical determination of every action and proceeding.

(d) Sanctions and Penalties for Noncompliance.

Failure of an attorney or of a party to comply with any provision of these Rules, General Orders of this District, Orders of the court, or the Federal Rules of Civil or Criminal Procedure shall be a ground for imposition of sanctions.

(e) Definitions. (Amended January 1, 1999)

1. The word "court," except where the context otherwise requires, refers to the United States District Court for the Northern District of New York.

2. The word "judge" refers either to a United States District Judge or to a United States Magistrate Judge, where appropriate.

3. The words "assigned judge," except where the context otherwise requires, refer to the United States District Judge or United States Magistrate Judge exercising jurisdiction with respect to a particular action or proceeding.

4. The words "Chief Judge" refer to the Chief Judge or a judge temporarily performing the duties of Chief Judge under 28 U.S.C. § 136(e).

5. The word "clerk" refers to a deputy clerk designated by the clerk to perform services of the general class provided for in Fed. R. Civ. P. 77.

6. The word "marshal" refers to the United States Marshal of this district and includes deputy marshals.

7. The word "party" shall include a party's representative.

8. Reference in these Rules to an attorney for a party is in no way intended to preclude a party from appearing pro se, in which case reference to attorney applies to the pro se litigant.

9. Where appropriate the "singular" shall include the "plural" and vice versa.

1.2 Availability of the Local Rules.

Copies of these Rules, and the amendments and appendices to them, shall be available from the clerk's office or at the court's web page at "www.nynd.uscourts.gov."

2.1 One Form Of Action.

[Reserved.]

SECTION II.
COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS.

3.1 Civil Cover Sheet.

A completed civil cover sheet on a form available from the clerk shall be submitted with every complaint, notice of removal, or other document initiating a civil action. This requirement is solely for administrative purposes, and matters appearing on the civil cover sheet have no legal effect in the action.

3.2 Venue. (Amended January 1, 1999)

Venue for civil cases filed in the Northern District of New York shall be controlled by the court's Civil Case Assignment Plan.

3.3 Complex and Multi-district Litigation. (Amended January 1, 1999)

(a) If the judge presiding over a case determines, in his or her discretion, that the case is of such a complex nature that it cannot reasonably be trial ready within eighteen months from the date the complaint is filed, the judge may design and issue a particularized case management order which will move the case to trial as quickly as the complexity of the case allows.

(b) The parties shall promptly notify the court in writing if any action commenced is appropriate for multi-district litigation.

4.1 Service of Process. (Amended January 1, 1999)

(a) Service shall be made in the manner specified in the Federal Rules of Civil Procedure, or as required or permitted by statute. The party seeking service of papers shall be responsible for arranging the service. The clerk is authorized to sign orders appointing persons to serve process.

(b) Upon the filing of a complaint, the clerk shall issue to the plaintiff General Order 25 which requires, inter alia, service of process upon all defendants within sixty (60) days of the filing of the complaint. This expedited service requirement is necessary to ensure adequate time for pretrial discovery and motion practice. In no event shall service of process be completed after the time specified in Fed. R. Civ. P. 4.

(c) At the time the complaint or notice of removal is served, the party seeking to invoke the jurisdiction of this court shall also serve on all parties the following materials:

1. Judicial Case Assignment Form;

2. Joint Civil Case Management Plan Containing Notice of Initial Pretrial Conference;

3. Notice and Consent Form to Proceed Before a United States Magistrate Judge; and

4. Notice and Consent Form for the Court Sponsored Alternative Dispute Resolution Procedures.

These materials shall be furnished to the party seeking to invoke the jurisdiction of this court by the clerk at the time the complaint or notice of removal is filed.

5.1 Service and Filing of Papers.

(a) All pleadings and other papers shall be served and filed in accordance with the Federal Rules of Civil Procedure and shall be in the form prescribed by L.R. 10.1. The party or their designee shall declare, by affidavit or certification, that they have provided all other parties in the action with all documents they have filed with the court. See also L.R. 26.2 (discovery material).

(b) In civil actions where the party has been directed to submit an order or judgment, all such orders or judgments shall be filed in duplicate by the party who secures the same; and the clerk's entry of such duplicate in the proper record book shall be deemed in compliance with Fed. R. Civ. P. 79(b). Such party shall also furnish the clerk with a sufficient number of additional copies for each party to the action, which the clerk shall mail with notice of entry in accordance with Fed. R. Civ. P. 77(d).

(c) In a civil action, on filing a notice of appeal, the appellant shall furnish the clerk with a sufficient number of copies for mailing in accordance with Fed. R. App. P. 3(d).

(d) On filing of a motion pursuant to Fed. R. Civ. P. 65.1, the moving party shall furnish the clerk with a sufficient number of copies of the motion and notice of the motion in compliance with the mailing provision of that rule.

(e) No paper on file in the clerk's office shall be removed except by order of a judge.

(f) All civil complaints submitted to the clerk for filing shall be accompanied by a summons or, if electing to serve by mail, the approved service by mail forms, together with sufficient copies of the complaint for service on each of the named defendants.

(g) Every summons shall be served by a private process server, except as otherwise required by statute or rule or as directed by the court for good cause shown. A private process server is any person authorized to serve process in an action brought in the New York State Supreme Court or in the court of general jurisdiction of the State in which service is made.

(h) In the case of a prisoner's civil rights action, or any action where a party has been granted leave to proceed in forma pauperis, the marshal shall serve the summons and complaint by regular mail pursuant to Fed. R. Civ. P. 4(c)(2). The marshal shall file the return or other acknowledgment of service with the court. The return shall constitute prima facie evidence of the service of process. If no acknowledgment of service is filed with the court, the marshal shall notify the plaintiff and, if requested by the plaintiff, shall make personal service as provided in Fed. R. Civ. P. 4.

5.2 Prepayment of Fees.

(a) Filing Fees.

A party commencing an action or removing an action from a state court must pay to the clerk the statutory filing fee before the case will be docketed and process issued. In forma pauperis proceedings are governed by Title 28 U.S.C. § 1915 and Local Rule 5.4.

(b) Miscellaneous Fees.

The clerk shall not be required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for the service is paid in advance.

5.3 Schedule of Fees.

Fee schedules are available at the clerk’s office or at the court’s web page at "www.nynd.uscourts.gov."

5.4 Civil Actions Filed In Forma Pauperis; (Amended January 1, 1999) Applications for Leave to Proceed In Forma Pauperis.

(a) On receipt of a complaint or petition and an application to proceed in forma pauperis, and supporting documentation as required for prisoner litigants, the clerk shall promptly file the complaint or petition without the payment of fees and assign the action in accordance with L.R. 40.1. The complaint, application, and supporting documentation then shall be forwarded to the assigned magistrate judge for a determination of whether the applicant will be granted leave to proceed in forma pauperis and whether the complaint or petition shall be served by the marshal. Prior to service of process by the marshal pursuant to 28 U.S.C. § 1915(d) and L.R. 5.1(h), the court shall review all actions filed pursuant to 28 U.S.C. § 1915 to determine whether sua sponte dismissal is appropriate. The granting of an in forma pauperis application shall in no way relieve the party of the obligation to pay all other fees for which such party is responsible regarding such action, including, but not limited to, copying and/or witness fees.

(b) Whenever a fee is due for a civil action subject to the Prison Litigation Reform Act (PLRA), the prisoner must comply with the following procedure:

1. (A) Submit a signed, fully completed and properly certified in forma pauperis application; and
   (B) Submit the authorization form issued by the clerk's office.

2. (A) (i) If the prisoner **has not** fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, a judicial officer shall, by Court order, inform the prisoner as to what must be submitted in order to proceed with such action in this District ("Order").

(ii) The Order shall afford the prisoner **thirty (30) days** in which to comply with the terms of same. If the prisoner has failed to fully comply with the terms of such Order within such period of time, the action shall be dismissed.

(B) If the prisoner **has** fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, the judicial officer shall review the in forma pauperis application. The granting of the application shall in no way relieve the prisoner of the obligation to pay the full amount of the filing fee.

3. After being notified of the filing of the civil action, the agency having custody of the inmate shall comply with the provisions of 28 U.S.C. § 1915(b) regarding the filing fee due concerning the action.

5.5 Filing by Facsimile.

The clerk's office shall not accept any facsimile transmission unless the court gives prior approval.

5.6 Service of the Writ in Exclusion and Deportation Cases.

(a) After delivery of an alien for deportation to the master of a ship or the commanding officer of an airplane, the writ shall be addressed to, and served on, the master or commanding officer only. Notice to the respondent of the allowance or issuance of the writ shall not be recognized as binding without proper service. Service shall be made by delivery of the original writ to the respondent while the alien is in custody. Service shall not be made on a master after a ship has cast off her moorings.

(b) In case the writ is served on the master of a ship or on the commanding officer of an airplane, such person may deliver the alien at once to the officer from whom such person received the alien for custody until the return day. In such case, the writ shall be deemed returnable promptly; and the custody of the officer receiving the alien shall be deemed that of the respondent, pending disposition of the writ.

5.7 Documents to be Provided to the Clerk.

All pretrial and settlement conference statements shall be provided to the clerk but not filed. These documents are not for public view. Forms for preparation of pretrial and settlement conference statements are available from the clerk's office or at the court's web page at "www.nynd.uscourts.gov."

6.1 Calculation of Time Periods.

[Reserved.]

SECTION III.
PLEADINGS AND MOTIONS

Local Rule 7.1 now includes the requirements and procedures previously set forth in General Order 41, relating to certain pre-trial dispositive motions. All pre-trial dispositive motions, not specifically exempted in 7.1(b)(1)(E) of this rule, are now governed by Local Rule 7.1(b)(1).

7.1 Motion Practice. (Amended January 1, 1999)

Introduction - Motion Dates and Times.

Motions are returnable at a regularly scheduled motion date and time of the assigned judge, unless the court directs otherwise. The moving party should select a return date accordingly, as set forth in subdivision (b). If the return date selected is not on a regularly scheduled motion date, or if no return date is selected, the clerk will set a proper return date and notify the parties.

Information regarding motion dates and times is specified on the case assignment form provided to the parties at the commencement of the litigation or may be obtained by calling the clerk's office.

(a) Papers Required.

Except as otherwise provided in this paragraph, all motions and opposition to motions require a memorandum of law, supporting affidavit, and proof of service on all the parties, see L.R. 5.1(a). Additional requirements for specific types of motions, including cross motions, see L.R. 7.1(c), are set forth within this rule.

1. Memorandum of Law.

No party shall file or serve a memorandum of law that exceeds twenty-five (25) pages in length, unless leave of the judge hearing the motion is obtained prior to filing. All memoranda of law shall contain a table of contents and, wherever possible, parallel citations. Memoranda of law that contain citations to decisions exclusively reported on computerized databases (e.g., Westlaw, Lexis, Juris, etc.) shall be accompanied by copies of the decisions.

When making a motion based upon a rule or statute, the moving papers must specify the rule or statute upon which the motion is predicated.

A memorandum of law is required for all motions except the following:

(A) a motion pursuant to Fed. R. Civ. P. 15 to amend or supplement a pleading;
(B) a motion pursuant to Fed. R. Civ. P. 12(e) for a more definite statement;
(C) a motion pursuant to Fed. R. Civ. P. 17 to appoint next friend or guardian ad litem;
(D) a motion pursuant to Fed. R. Civ. P. 25 for substitution of parties; and
(E) a motion pursuant to Fed. R. Civ. P. 37 to compel discovery.

2. Affidavit.

An affidavit must not contain legal arguments, but must contain factual and procedural background as appropriate for the motion being made.

An affidavit is required for all motions except the following:

(A) a motion pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted;
(B) a motion pursuant to Fed. R. Civ. P. 12(c) for judgment on the pleadings; and
(C) a motion pursuant to Fed. R. Civ. P. 12(f) to strike a portion of a pleading.

3. Summary Judgment Motions.

Any motion for summary judgment shall contain a Statement of Material Facts. The Statement of Material Facts shall set forth, in numbered paragraphs, each material fact the moving party contends there exists no genuine issue. Each fact listed shall set forth a specific citation to the record where the fact is established. The record for purposes of the Statement of Material Facts includes the pleadings, depositions, answers to interrogatories, admissions and affidavits. It does not, however, include attorney's affidavits. Failure of the moving party to submit an accurate and complete Statement of Material Facts shall result in a denial of the motion.

The opposing party shall file a response to the Statement of Material Facts. The non-movant's response shall mirror the movant's Statement of Material Facts by admitting and/or denying each of the movant's assertions in matching numbered paragraphs. Each denial shall set forth a specific citation to the record where the factual issue arises. The non-movant's response may also set forth any additional material facts that the non-movant contends are in dispute. Any facts set forth in the Statement of Material Facts shall be deemed admitted unless specifically controverted by the opposing party.

4. Motions to Amend or Supplement Pleadings, or for Joinder or Interpleader.

An unsigned copy of the proposed amended pleading must be attached to a motion brought under Fed. R. Civ. P. 14, 15, 19-22. Except as provided by leave of court, the proposed amended pleading must be a complete pleading which will supersede the original pleading in all respects. No portion of the prior pleading shall be incorporated into the proposed amended pleading by reference.

The motion must set forth specifically the proposed amendments and identify the amendments in the proposed pleading.

Where leave to supplement a pleading is sought under Fed. R. Civ. P. 15(d), the proposed supplemental pleading must be limited to acts that occurred subsequent to the filing of the original complaint. The paragraphs in the proposed pleading must be numbered consecutively to the paragraphs contained in the pleading that is to be supplemented.

Caveat: The granting of the motion does not constitute the filing of the pleading. After leave is given, the moving party must file and serve the original signed pleading.

(b) Motions.

1. Dispositive Motions.

Parties that file motions pursuant to this subdivision must comply in all respects with the Local Rules of this District regarding the preparation and filing of motions, unless otherwise provided under this subdivision.

(A) Moving Papers. The moving party must serve a copy of all moving papers required to be submitted on all other parties. The return date on the Notice of Motion will be left open. The papers must be accompanied by a cover letter that states the type of motion that is being prepared, and lists separately each document comprising the moving papers. The moving party must file a copy of the **cover letter** [1] with the clerk.

(B) Opposition Papers. Opposition papers must be served on the moving party within **TWENTY-ONE CALENDAR DAYS** from the date on which the motion papers were served by the original moving party. The parties may agree to a reasonable extension of time in which to serve opposition papers. See subdivision 7.1(c) regarding cross-motions.

The opposition papers served on the original moving party must include an original and one copy. One copy of opposition papers must be served on all other parties. The opposition papers must also include a cover letter that lists separately each document comprising the opposition papers. A copy of the cover letter must be filed with the clerk.

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[1] **Important: Deadlines for Pretrial Submissions and Fed. R. Civ. P. 12 Extensions to File Answer**. The filing of a ***cover letter*** with the clerk's office does not satisfy pretrial deadlines. To be timely, the fully briefed motion package (motion, opposition, and reply) must be filed on or before the motion filing deadline. However, the filing of a cover letter with the clerk's office in connection with a Rule 7.1(b)(1) motion operates as an automatic extension of time to file a responsive pleading (i.e., Answer) pursuant to Fed. R. Civ. P. 12(a) and (b).

(C) Reply Papers. A party may serve a reply brief with supporting papers, made pursuant to this subdivision, without leave of court. Reply papers, if any, must be served on the opposing party within **FOURTEEN CALENDAR DAYS** from the date on which the opposition papers were served by the opposing party, unless the parties agree to a reasonable extension of time in which to serve the reply papers. See footnote #1 regarding motion filing deadline. A copy of the reply papers must be served on all other parties. Reply briefs must not exceed ten pages in length, exclusive of exhibits.

A cover letter that lists separately each document comprising the reply papers must accompany the papers. A copy of the cover letter must be filed with the clerk. See subdivision (c) for replies made to cross-motions.

A surreply is not permitted.

(D) Moving Party's Responsibility & Return Date Selection. The original moving party must file all original papers, including moving papers, opposition papers, cross-motions, and replies. The original moving party must also file a cover letter that states the return date and lists separately each document (brief, affidavit, etc.) submitted for filing. The original moving party must send a copy of the cover letter to all other parties. The return date selected should be the next regularly scheduled motion day of the assigned judge that is at least **TWENTY-ONE CALENDAR DAYS** after the date of filing.

All original papers must be filed in the clerk's office at the location designated on the case assignment form provided to the parties at the commencement of the litigation.

A courtesy copy of motion papers should not be provided to the assigned judge unless specifically requested.

(E) Exemptions. The following types of actions or motions are exempt from 7.1(b)(1). Rule 7.1(b)(2) governs the below actions.

1. All actions in which a party who is not an attorney is appearing pro se;

2. Actions commenced by a party who is incarcerated;

3. Multi-district litigation actions;

4. Complex or multi-party actions (only upon application made to and specifically granted by the court);

5. Appeals from rulings issued by governmental agencies;

6. Appeals of fee determinations under the Equal Access to Justice Act (indicated on the civil cover sheet by N.O.S. 900);

7. Forfeiture/Penalty Actions (indicated on the civil cover sheet by N.O.S. 610-690);

8. Bankruptcy Actions (indicated by the civil cover sheet by N.O.S. 422-423);

9. Social Security actions (indicated on the civil cover sheet by N.O.S. 861-865). See Magistrate Judges Order Directing Filing of Answer, Administrative Record, Briefs and Providing for Oral Hearing on Appeal from Social Security Benefits Decision;

10. All Criminal Cases;

11. Contract actions by the federal government seeking recovery of overpayment and enforcement of judgments; actions brought under the Medicare Act; actions for recovery of defaulted student loans and actions for recovery of overpayment of Veteran's benefits (indicated on the civil cover sheet by N.O.S. 150-153);

12. Contract actions by the federal government that involve the collection of debts owed to the United States or that involve the foreclosure of real property (indicated on the civil cover sheet by N.O.S. 220);

13. Motions for reconsideration, for relief from judgment or order, or to alter any judgment or order;

14. Motions seeking only injunctive relief and Orders to Show Cause;

15. Motions for attorneys' fees;

16. Motions for default judgment;

17. Motions to change venue;

18. Motions to remand an action to state court;

19. Motions in limine;

20. Motions filed in state court before the removal of such action to this District.

2. Non-Dispositive Motions and Motions Exempt from 7.1(b)(1).

All motion papers not prepared pursuant to Local Rule 7.1(b)(1) (that is, non-dispositive motions and those motions specifically exempted from 7.1(b)(1)) must be filed with the court and served upon the other parties not less than **TWENTY-EIGHT CALENDAR DAYS** prior to the return date of the motion. The Notice of Motion should state the return date which has been selected by the moving party. See L.R. 7.1(a). Opposing papers must be filed with the court and served upon the other parties not less than **FOURTEEN CALENDAR DAYS** prior to the return date of the motion. Reply papers may be filed only with leave of court, upon a showing of necessity. If leave is granted, reply papers must be filed with the court and served upon the other parties not less than **SEVEN CALENDAR DAYS** prior to the return date of the motion.

All original motion papers shall be filed in the clerk's office designated on the case assignment form provided to the parties at the commencement of the litigation.

The parties shall not file, or otherwise provide to the assigned judge, a courtesy copy of the motion papers unless specifically requested to do so by that judge.

3. Failure To Timely File or Comply.

Any papers required under this Rule that are not timely filed or are otherwise not in compliance with this Rule shall not be considered unless good cause is shown. Failure to file or serve any papers as required by this Rule shall be deemed by the court as consent to the granting or denial of the motion, as the case may be, unless good cause is shown.

Any party who does not intend to oppose a motion, or a movant who does not intend to pursue a motion, shall promptly notify the court and the other parties of such intention. Notice should be provided at the earliest practicable date, but in any event no less than **SEVEN CALENDAR DAYS** prior to the scheduled return date of the motion, unless for good cause shown. **Failure to comply with this Rule may result in the imposition of sanctions by the court.**

(c) Cross-Motions.

1. Motions under 7.1(b)(1).

A cross-motion may be served at the time opposition papers to the original motion are served, under the time provisions of 7.1(b)(1)(B). The original and one copy of the cross-motion/opposition papers must be served on the original moving

party, and one copy must be served upon all other parties. If a cross-motion is made, the cross-motion brief must be joined with the opposition brief and may not exceed 25 pages in length, exclusive of exhibits. A separate brief in opposition to the original motion is not permissible.

The original moving party may reply in further support of the original motion and in opposition to the cross-motion with a reply/opposition brief that does not exceed 25 pages in length, exclusive of exhibits. The reply/opposition papers must be served on the opposing party within **FOURTEEN CALENDAR DAYS** from the date on which the opposition papers were served by the opposing party, unless the parties agree otherwise.

The cross-moving party may reply in further support of the cross-motion with a reply brief that does not exceed 10 pages in length, exclusive of exhibits, under the time provisions of 7.1(b)(1)(C). The original and one copy of the reply must be served upon the original moving party, and one copy must be served on all other parties.

Page lengths may not be exceeded except with prior permission of the judge hearing the motion.

2. Motions under 7.1(b)(2).

A party opposing a motion may also file and serve a cross-motion with its opposition papers. However, a dispositive motion which would be filed under 7.1(b)(1) must not be filed as a cross-motion to a motion filed under 7.1(b)(2). A cross-motion is returnable on the same date as the original motion. The original moving party must file and serve on the other parties a response to the cross-motion not less than **SEVEN CALENDAR DAYS** prior to the scheduled return date.

(d) Discovery Motions.

The following steps are required prior to making any discovery motion pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure.

1. Parties must make good faith efforts among themselves to resolve or reduce all differences relating to discovery prior to seeking court intervention.

2. The moving party must confer in detail with the opposing party concerning the discovery issues between them in a good faith effort to eliminate or reduce the area of controversy and to arrive at a mutually satisfactory resolution. Failure to do so may result in denial of a motion to compel discovery and/or imposition of sanctions.

3. If the parties' conference does not fully resolve the discovery issues, the party seeking relief must then request a court conference with the assigned magistrate judge. The assigned magistrate judge may direct the party making the request

for a court conference to file an affidavit setting forth the date(s) and mode(s) of the consultation(s) with the opposing attorney and a letter that concisely sets forth the nature of the dispute and a specific listing of each of the items of discovery sought or opposed. Immediately following each disputed item, the party must set forth the reason why the item should be allowed or disallowed.

4. Following a request for a discovery conference, the court may schedule a conference and advise all attorneys of a date and time. The discovery conference may be conducted by telephone conference call, initiated by the party making the request for the conference, by video conference, or by personal appearance, as directed by the assigned judge.

5. Following a discovery conference, the court may direct the prevailing party to submit a proposed order, on notice to the opposing party.

6. If a party fails or refuses to confer in good faith with the requesting party, thus requiring the request for a discovery conference, at the discretion of the court the resisting party will be subject to the sanction of the imposition of costs, including the attorney's fees of opposing counsel in accordance with Fed. R. Civ. P. 37.

7. A party claiming privilege with respect to a communication or other item must specifically identify the privilege and the grounds for the privilege claimed. No generalized claims of privilege may be made.

8. Motions to compel discovery may be filed no later than **THIRTY CALENDAR DAYS** after the discovery cut-off date. See L.R. 16.2.

(e) Order to Show Cause.

In addition to a memorandum of law and supporting affidavit, an Order to Show Cause must include an affidavit clearly and specifically showing good and sufficient cause why the standard Notice of Motion procedure cannot be used. Reasonable advance notice of the application for an Order to Show Cause must be given to the other parties.

An Order to Show Cause must contain a space for the assigned judge to set forth the: (a) deadline for supporting papers to be filed and served, (b) deadline for opposing papers to be filed and served, and (c) the date and time for the hearing.

(f) Temporary Restraining Order.

A temporary restraining order may be sought by Notice of Motion or Order to Show Cause, as appropriate. Filing procedures and requirements for supporting documents are the same as set forth in this Rule for other motions. Any application for a temporary restraining order must be served on all other parties unless otherwise permitted by Fed. R. Civ. P. 65.

(g) Motion for Reconsideration.

Motions for reconsideration or reargument, unless otherwise governed by Fed. R. Civ. P. 60, may be served not later than **TEN CALENDAR DAYS** after the entry of the challenged judgment, order, or decree. The papers supporting and opposing the motion must be filed pursuant to the time schedule set forth in Local Rule 7.1(b)(2). A memorandum of law concisely setting forth the basis for the motion is required. See L.R. 7.1(a). Motions for reconsideration or reargument will be decided on submission of the papers, without oral argument, unless the court directs otherwise.

(h) Oral Argument.

On all motions made to a district court judge, except motions for reconsideration, the parties shall appear for oral argument on the scheduled return date of the motion. In the discretion of the district court judge, or on consideration of a request of any party, a motion returnable before a district court judge may be disposed of without oral argument. Thus, the parties should be prepared to have their motion papers serve as the sole method of argument on the motion.

On all motions made to a magistrate judge, the parties shall not appear for oral argument on the scheduled return date of the motion unless the court sua sponte directs or grants the request of any party for oral argument.

(i) Sanctions for Vexatious or Frivolous Motions or Failure to Comply with this Rule.

A party who presents vexatious or frivolous motion papers, or fails to comply with this Rule is subject to discipline as the court deems appropriate, including sanctions and the imposition of costs and attorney's fees to opposing counsel.

(j) Adjournments.

Adjournment of motions is in the discretion of the court. Any party seeking an adjournment from the court must first contact the opposing party. No motion under this Rule will be adjourned more than two times unless the party seeking the adjournment has satisfied the court that a further adjournment is necessary. In no event shall an adjournment last longer than four months. The party requesting the adjournment is responsible for renoticing the motion. Any motion not renoticed within four months from the initial adjournment will be deemed withdrawn.

8.1 Rules of Pleading.

[Reserved.]

9.1 Request for Three-Judge Court.

Whenever a party believes that the relief requested in a lawsuit is such that it may be granted only by a three-judge court, the words "Three-Judge Court," or the equivalent, shall be included

immediately following the title of the first pleading in which the cause of action requesting a three-judge court is asserted. Unless the basis for the request is apparent from the pleading, it shall be set forth in the pleading or in an attached statement. On the convening of a three-judge court, in addition to the original papers on file, there shall be made available to the clerk for distribution: three copies of the pleadings, three copies of the motion papers, and three copies of all memoranda of law.

9.2 Requirement to File a Civil RICO Statement.

In any action in which a party asserts a claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., the party asserting such a claim shall file, within thirty (30) days of the filing of the pleading containing such claim, a RICO statement. This statement shall conform to the format adopted by the court and entitled "RICO Statement". Copies of General Order #34 - CIVIL RICO STATEMENT FILING REQUIREMENTS may be obtained from any office of the U.S. District Court Clerk for the Northern District of New York or at the court's web page at "www.nynd.uscourts.gov." This statement shall state in detail and with specificity the information requested in the RICO Statement. The court shall construe the RICO Statement as an amendment to the pleadings.

9.3 Requirement of Certain Information to be Contained in Complaints Filed Under Section 205(g) of the Social Security Act.

Complaints filed in civil cases, pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g), for benefits under Titles II, XVI, and XVIII of the Social Security Act shall contain, in addition to what is required under Fed. R. Civ. P. 8(a), the following information:

(a) In cases involving claims for retirement, survivors, disability, and health insurance benefits, the Social Security number of the worker on whose wage record the application for benefits was filed (who may or may not be the plaintiff); and

(b) In cases involving claims for supplemental security income benefits, the Social Security number of the plaintiff.

10.1 Form of Papers. (Amended January 1, 1999)

(a) Form Generally. All pleadings, motions, and other documents presented for filing should be in the following form:

- 8 ½ x 11 inch white paper of good quality,
- plainly and legibly written, typewritten, printed or reproduced,
- without erasures or interlineation materially defacing them,
- in black ink,
- pages fastened,
- text in minimum 12 point type; footnotes minimum 10 point type,
- text double spaced,
- block quotation and footnotes may be single spaced,
- extensive footnotes may not be used to circumvent page limitations,

- compacted or other compressed printing features are prohibited,
- 3 inch top margin on first page,
- typed matter not exceeding 6-l/2 x 9-1/2 inches on subsequent pages,
- pages consecutively numbered,
- punched with two (2) holes approximately 1/4 inch in diameter, centered 2-3/4 inches apart, 1/2 to 5/8 inch from top edge of document,
- electronic submission in a WordPerfect-compatible format may be ordered by the court.

Documents that do not comply with the requirements listed above may be rejected upon order of the court.

(b) Information Required. The following information must appear on each document filed:

1. A caption, which must include the title of the court, the title of the action, the civil action number of the case, the initials of the assigned judges, and the name or nature of the paper in sufficient detail for identification. Affidavits and declarations must be separately captioned, and must not be physically attached to the Notice of Motion or Memorandum of Law.

2. Each document must identify the person filing the document. This identification must include an original signature of the attorney or pro se litigant; the typewritten name of that person; the address of a pro se litigant; and the bar roll number, office address, telephone number and fax number of the attorney.

All attorneys of record and pro se litigants must immediately notify the court of any change of address. The notice of change of address is to be filed with the clerk of the court and served on all other parties to the action. The notice must identify each and every action for which the notice shall apply.

Attorneys shall also file a new registration statement within ten days of a change of address, firm name, telephone number, or fax number. See Appendix B to the Rules; see also L.R.41.2(b); L.R. 83.1(e).

(c) The record on hearings, unless ordered printed, shall be plainly typewritten and bound in book form, paged and indexed.

(d) All documents including exhibits must be in the English language or be accompanied by an English translation.

(e) The record on hearings, unless ordered printed, shall be plainly typewritten and bound in book form, paged and indexed.

11.1 Signing of Pleadings, Motions, and Other Papers; Sanctions.

[Reserved.]

12.1 Defenses and Objections - How Presented.

[Reserved.]

13.1 Counterclaims and Cross-Claims.

[Reserved.]

14.1 Impleader. (Amended January 1, 1999)

See L.R. 7.1(a)(4).

15.1 Form of a Motion to Amend and Its Supporting Documentation. (Amended January 1, 1999)

See L.R. 7.1(a)(4).

16.1 Civil Case Management. (Amended January 1, 1999)

This court has found that the interests of justice are most effectively served by adopting a systematic, differential case management system which tailors the level of individualized and case specific management to such criteria as case complexity, time required to prepare a case for trial, and availability of judicial and other resources.

(a) Filing of Complaint/Service of Process. Upon the filing of a complaint, the clerk shall issue to the plaintiff General Order 25 which requires, *inter alia*, service of process upon all defendants within sixty (60) days of the filing of the complaint. This expedited service requirement is necessary to ensure adequate time for pretrial discovery and motion practice.

(b) Assignment of District Judge/Magistrate Judge. Upon filing of a complaint, the clerk shall assign a district judge and a magistrate judge to preside over each case. The assignment shall be made in accordance with the provisions of the case assignment plan. Once assigned, either judicial officer shall have authority to design and issue a case management order.

(c) Initial Pretrial Conference. Except for cases excluded under section II of General Order 25, an initial pretrial conference pursuant to Rule 16 of the Fed. R. Civ. P. shall be held within 120 days after the filing of the complaint. The date of this conference shall be set by the clerk upon the filing of the complaint. The purpose of this conference will be to prepare and adopt a case-specific management plan which will be memorialized in a case management order (see subsection (d) below). In order to facilitate the adoption of such a plan, prior to the scheduled conference counsel for all parties shall confer among themselves as required by Rule 26(f) of the Fed. R. Civ. P. and shall utilize the Civil Case Management Plan form contained in the General Order 25 filing packet. The parties' jointly-proposed plan, or if consensus cannot be reached, each

party's proposed plan, shall be filed with the clerk at least ten (10) business days prior to the scheduled pretrial conference.

(d) Subject Matter of Initial Pretrial Conference. At the initial pretrial conference, the court shall consider and the parties shall be prepared to discuss the following:

1. 1. Deadlines for joinder of parties, amendment of pleadings, completion of discovery, and filing of dispositive motions;

2. Trial date;

3. Requests for jury trial;

4. Subject matter and personal jurisdiction;

5. Factual and legal bases for claims and defenses;

6. Factual and legal issues in dispute;

7. Factual and legal issues that can be agreed upon or which can be narrowed through motions and which will expedite resolution of the dispute;

8. Specific relief requested, including method for computing damages;

9. Intended discovery and proposed methods to limit and/or decrease time and expense thereof;

10. Suitability of case for voluntary arbitration;

11. Measures for reducing length of trial;

12. Related cases pending before this or other U.S. District Courts;

13. Procedures for certifying class actions, if appropriate;

14. Settlement prospects; and

15. If the case is in the ADR track, choice of ADR method and estimated time for completion of ADR.

(e) Uniform Pretrial Scheduling Order. Upon completion of the initial pretrial conference, the presiding judge may issue a Uniform Pretrial Scheduling Order setting forth deadlines for joinder of parties, amendment of pleadings, production of expert reports, completion of discovery, and filing of motions; a trial ready date; the requirements for all trial submissions; and if an ADR track case, the ADR method to be used and the deadline for completion of ADR.

(f) Enforcement of Deadlines. Deadlines instituted by the court in any case management order shall be strictly enforced and shall not be modified by the court, even upon stipulation of the parties, except upon a showing of good cause.

16.2 Discovery Cut-Off.

The "discovery cut-off" is that date by which all responses to written discovery shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded. Counsel are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this Rule. Discovery requests that call for responses or scheduled depositions after the discovery cut-off will not be enforceable except by order of the court for good cause shown. Motions to compel discovery shall be filed no later than thirty (30) days after the discovery cut-off. See L.R. 7.1(d)(8).

SECTION IV.
PARTIES

17.1 Actions by or on Behalf of Infants and/or Incompetents.

(a) An action by or on behalf of an infant or incompetent shall not be settled or compromised, or voluntarily discontinued, dismissed or terminated, without leave of the court embodied in an order, judgment or decree. The proceedings on an application to settle or compromise such an action shall conform to the New York State statutes and rules; but the court, for good cause shown, may dispense with any New York State requirement.

(b) The court shall authorize payment of a reasonable attorney's fee and proper disbursements from the amount recovered in such an action, whether realized by settlement, execution or otherwise and shall determine the fee and disbursements, after due inquiry as to all charges against the amount recovered.

(c) The court shall order the balance of the proceeds of the recovery or settlement to be distributed as it deems will best protect the interest of the infant or incompetent.

18.1 Joinder of Claims and Remedies. (Amended January 1, 1999)

See L.R. 7.1(a)(4).

19.1 Joinder of Persons Necessary for Just Adjudication. (Amended January 1, 1999)

See L.R. 7.1(a)(4).

20.1 Permissive Joinder of Parties. (Amended January 1, 1999)

See L.R. 7.1(a)(4).

21.1 Misjoinder and Nonjoinder of Parties. (Amended January 1, 1999)

See L.R. 7.1(a)(4).

22.1 Interpleader.

[Reserved.]

23.1 Designation of "Class Action" in the Caption.

(a) In any case sought to be maintained as a class action pursuant to Fed. R. Civ. P. 23, the complaint or other pleading asserting a class action shall include next to its caption the words "Class Action."

(b) The plaintiff also shall check the appropriate box on the Civil Cover Sheet at the time of filing the action.

24.1 Intervention.

[Reserved.]

25.1 Substitution of Parties.

[Reserved.]

SECTION V.
DEPOSITIONS AND DISCOVERY

Pursuant to General Order 40, the Northern District has elected not to adopt the suggested modifications of Fed. R. Civ. P. 26(a)(1),(2) and (3) (insofar as it provides for mandatory disclosures without request), 30(a)(2)(A)(insofar as it limits the number of depositions), 31(a)(2)(A)(insofar as it limits the number of depositions upon written questions), and 33(a)(insofar as it limits the number of interrogatories). If, however, Congress revokes the ability of the District Court to opt out of these suggested changes, General Order 40 shall be abrogated accordingly and the respective Federal Rule of Civil Procedure shall govern.

26.1 Form of Certain Discovery Documents.

The parties shall number each interrogatory or request sequentially, regardless of the number of sets of interrogatories or requests. In answering or objecting to interrogatories, requests for admission, or requests to produce or inspect, the responding party shall first state verbatim the propounded interrogatory or request and immediately thereafter the answer or objection.

26.2 Filing Discovery.

Parties shall not file notices to take depositions, transcripts of depositions, interrogatories, requests for documents, requests for admissions, disclosures, and answers and responses to these notices and requests unless the court orders otherwise; provided, however, that discovery material to be used at trial or in support of any motion, including a motion to compel or for summary judgment, shall be filed with the court prior to the trial or motion. Any motion pursuant to Fed. R. Civ. P. 37 shall be accompanied by the discovery materials to which the motion relates if those materials have not previously been filed with the court.

26.3 Production of Expert Witness Information. (Amended January 1, 1999)

There shall be binding disclosure of the identity of expert witnesses. Such disclosure, including a curriculum vitae and, unless waived by the other parties, service of the expert's written report pursuant to Fed. R. Civ. P. 26(a)(2)(B), must be made before the completion of discovery in accordance with the deadlines contained in the Uniform Pretrial Scheduling Order or any other court order. Failure to comply with these deadlines may result in the imposition of sanctions, including the preclusion of testimony, pursuant to Fed. R. Civ. P. 16(f).

If a treating physician is expected to be called as a witness, he or she must be identified in accordance with the timetable provided in the Uniform Pretrial Scheduling Order or other court order.

26.4 Timing of Discovery. (Amended January 1, 1999)

Fed. R. Civ. P. 26(d), which prohibits discovery prior to a meeting and conference between the parties, and Fed. R. Civ. P. 26(f), which directs parties to meet and confer with each other relative to the nature and basis of claims and defenses to a lawsuit, shall not apply to any action in which a party is incarcerated.

27.1 Depositions Before Action or Pending Appeal.

[Reserved.]

28.1 Persons Before Whom Depositions Shall be Taken.

[Reserved.]

29.1 Discovery Stipulations. (Amended January 1, 1999)

[Reserved.] See L.R. 16.1(f); 16.2.

30.1 Depositions.

Unless otherwise ordered by the court pursuant to Rules 5(d) and 26(c) of the Federal Rules of Civil Procedure, transcript of depositions, when received and filed by the clerk, shall then be opened by the clerk or deputy who shall affix the filing stamp to the cover page of the transcripts. See L.R. 26.2.

31.1 Depositions On Written Questions.

[Reserved.]

32.1 Use of Depositions in Court Proceedings.

[Reserved.]

33.1 Interrogatories.

[Reserved.]

34.1 Production of Documents and Things.

[Reserved.]

35.1 Physical and Mental Examination of Persons.

[Reserved.]

36.1 Requests for Admission.

[Reserved.]

37.1 Form of Discovery Motions.

See L.R. 7.1(d).

SECTION VI.
TRIALS

38.1 Notation of "Jury Demand" in the Pleading. (Amended January 1, 1999)

(a) If a party demands a jury trial as permitted by Fed. R. Civ. P. 38(b), a notation shall be placed by the party on the front page of the initial pleading signed by the party stating "Demand for Jury Trial" or an equivalent statement. This notation shall serve as a sufficient demand under Fed. R. Civ. P. 38(b).

(b) In cases removed from state court, a party may file a "Demand for Jury Trial" that is separate from the initial pleading. See Fed. R. Civ. P. 81.3; L.R. 81.3.

39.1 Opening Statements and Closing Arguments.

The court will determine the time to be allotted for opening and closing arguments.

39.2 Submission of Pretrial Papers. (Amended January 1, 1999)

All pretrial submissions are to be filed in accordance with the requirements of the Uniform Pretrial Scheduling Order unless otherwise ordered by the court.

40.1 Case Assignment System. (Amended January 1, 1999)

Immediately upon the filing of a civil action or proceeding, the clerk shall assign to such action or proceeding a district judge and magistrate judge pursuant to the Assignment Plan of the Court.

40.2 Preferences.

Only the following causes shall be entitled to preferences:

1. Issues in bankruptcy framed by an answer to a bankruptcy petition which are triable by a jury;

2. Causes entitled to a preference under any statute of the United States;

3. Causes restored to the calendar for a new trial by the setting aside of a former verdict, by reversal of a former judgment, or after a mistrial;

4. Causes to which a receiver appointed by any court or a trustee or debtor-in-possession in a bankruptcy proceeding is a party;

5. Causes which, in the discretion of the assigned judge, are entitled to a preference for meritorious reasons.

Preferences shall be obtained only by order of the court on two days notice of the application.

40.3 Trial Calendar. (Amended January 1, 1999)

The trial calendar number shall be the same as the docket number. No note of issue is required. Each judge shall dispose of cases as required by law, and the effective administration of justice.

41.1 Settlements, Apportionments and Allowances in Wrongful Death Actions.

In an action for wrongful death:

The court shall apportion the proceeds of the action only where required by statute;

The court shall approve a settlement only in a case covered by subdivision 1.; and

The court shall approve an attorney's fee only upon application in accordance with the provisions of the Judiciary Law of the State of New York.

41.2 Dismissal of Actions. (Amended January 1, 1999)

(a) Each judge shall from time to time notice for hearing on a dismissal calendar such actions or proceedings assigned to that judge which appear not to have been diligently prosecuted. Whenever it appears that the plaintiff has failed to prosecute an action or proceeding diligently, the assigned judge shall order it dismissed. In the absence of an order by the assigned judge or magistrate judge setting any date for any pretrial proceeding or for trial, failure by the plaintiff to take action for four (4) months shall be presumptive evidence of lack of prosecution. Unless otherwise ordered by the assigned judge or magistrate judge, each party shall, not less than ten (10) days prior to the noticed hearing date, serve and file a certificate setting forth the status of the action or proceeding and whether good cause exists to dismiss it for failure to prosecute. The parties need not appear in person. No explanations communicated in person, over the telephone, or by letter shall be acceptable. If a party fails to respond as required by this Rule, the judge shall issue a written order dismissing the case for failure to prosecute or providing for sanctions or making other directives to the parties as justice requires. Nothing in this Rule shall preclude any party from filing a motion to dismiss an action or proceeding for failure to prosecute under Fed. R. Civ. P. 41(b).

(b) Failure to notify the court of a change of address in accordance with L.R. 10.1(b) may result in the dismissal of any pending action.

41.3 Actions Dismissed by Stipulation.

Stipulations of dismissal shall be signed by each attorney and/or pro se litigant appearing in the action. Any action which is submitted for dismissal by stipulation of the parties shall contain the following language, if applicable: "That no party hereto is an infant or incompetent." For actions involving an infant or incompetent see L.R. 17.1.

42.1 Separation of Issues in Civil Suits.

[Reserved.]

43.1 Examination of Witnesses.

[Reserved.]

44.1 Official Records.

[Reserved.]

45.1 Subpoenas.

[Reserved.] See Fed. R. Civ. P. 45.

46.1 Exceptions to Rulings.

[Reserved.]

47.1 Grand and Petit Jurors. (Amended January 1, 1999)

Grand and petit jurors to serve at stated and special sessions of the court shall be summoned pursuant to the Jury Selection and Service Act of 1968, as amended, codified in Title 28 of the United States Code, and the Plan adopted and approved by the judges of this court and approved by the Judicial Council for the Court of Appeals for the Second Circuit. The selection of grand and petit jurors is made by random selection from voter registration lists and supplemented by, if available, lists of licensed drivers from the New York State Department of Motor Vehicles. Court sessions, pursuant to 28 U.S.C. § 112, are designated to be held in the Northern District of New York in the cities of Albany, Auburn, Binghamton, Malone, Syracuse, Utica and Watertown. For jury selection purposes under § 1869(c) of the Act, this district is divided into divisions from which jurors are selected for the particular place where jury sessions are to be held. The divisions are as follows:

1. ALBANY DIVISION: Albany, Clinton, Columbia, Essex, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren and Washington Counties.

2. AUBURN DIVISION: Cayuga, Cortland and Tompkins Counties.

3. BINGHAMTON DIVISION: Broome, Chenango, Delaware, Otsego and Tioga Counties.

4. SYRACUSE DIVISION: Madison, Onondaga and Oswego Counties.

5. UTICA DIVISION: Fulton, Hamilton, Herkimer, Montgomery and Oneida Counties.

6. WATERTOWN - MALONE DIVISION: Franklin, Jefferson, Lewis and St. Lawrence Counties.

A copy of the Plan for the NDNY for Random Selection of Grand and Petit Jurors, is available upon request at the office of the clerk or on the court's web page at "www.nynd.uscourts.gov."

47.2 Jury Selection.

(a) Voir Dire. Voir dire examination shall be conducted by the court, by the attorneys, or by both, as the court shall determine. Within the sound discretion of the court, the attorneys' examination shall be limited by time and subject matter.

(b) Impanelment of the Jury. Unless otherwise ordered, the jury shall be impaneled by use of the "Strike" or "Jury Box" selection method at the discretion of the court.

(c) Peremptory Challenges. Unless otherwise provided, peremptory challenges shall be exercised alternately by all parties.

(d) Waiver of Peremptory Challenges. Except when using the strike method, to pass or refuse to exercise a peremptory challenge shall constitute a waiver of the right to exercise the challenge.

47.3 Assessment of Juror Costs.

Whenever any civil action scheduled for jury trial is postponed, settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all juror costs, including marshal's fees, mileage and per diem, shall be assessed against the parties and/or their attorneys as directed by the court, unless the court and the clerk's office are notified at least one full business day prior to the day on which the action is scheduled for trial, in time to advise the jurors that it shall not be necessary for them to attend. The parties shall receive an advance estimation of costs upon request to the clerk.

47.4 Jury Deliberation.

Availability of Attorneys During Jury Deliberations. Attorneys shall be available on short notice during jury deliberations in the event of a verdict or a question by the jury. The clerk shall be kept informed as to where attorneys will be at all times when the jury is deliberating. Attorneys should not leave the building without the prior approval of the presiding judge.

47.5 Jury Contact Prohibition.

The following rules apply in connection with contact between attorneys or parties and jurors:

1. At any time after a jury panel has been called by the court from which jurors shall be selected to try cases for a term of court fixed by the presiding judge or otherwise impaneled, no party or attorney, or anyone associated with the party or the attorney, shall have any communication or contact by any means or manner with any juror until such time as the panel of jurors has been excused and the term of court ended.

2. This prohibition is designed to prevent all unauthorized contact between attorneys or parties and jurors and does not apply when authorized by the judge while court is in session, or when otherwise authorized by the presiding judge.

48.1 Number of Jurors.

In civil cases the court shall determine the number of jurors, which shall not be less than six nor more than twelve.

49.1 Special Verdicts and Interrogatories.

[Reserved.]

50.1 Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings.

[Reserved.]

51.1 Instructions to the Jury. (Amended January 1, 1999)

(a) When Submitted and Served.

See Uniform Pretrial Scheduling Order issued by the court following the initial pretrial conference. See L.R. 16.1(e).

52.1 Proposed Findings in Civil Cases. (Amended January 1, 1999)

(a) In civil non-jury trials, each party shall submit proposed findings of fact, and conclusions of law sufficiently detailed that, if adopted by the court, would form an adequate factual basis, supported by anticipated evidence, for the resolution of the case and the entry of judgment.

(b) When Submitted and Served.

See Uniform Pretrial Scheduling Order issued by the court following the initial pretrial conference. See L.R. 16.1(e).

53.1 Masters.

[Reserved]

53.2 Master's Fees.

The compensation of masters shall be fixed by the court in its discretion. Factors to be considered by the court shall include expended hours, disbursements, the relative complexity of the matter, and whether the parties have previously consented to a reasonable rate of compensation. The compensation and disbursements shall be paid and taxed as costs in the manner and amounts directed by the court unless the parties stipulate otherwise.

53.3 Oath of Master, Commissioner, etc.

Every person appointed master, special master, commissioner, special commissioner, referee, assessor or appraiser (collectively referred to as "master") shall take and subscribe an oath, which, except as otherwise prescribed by statute or rule, shall be to the effect that said duties shall be faithfully and impartially discharged. The oath shall be taken before any federal or state officer authorized by federal law to administer oaths and shall be filed in the office of the clerk.

SECTION VII.
JUDGMENTS

54.1 Taxation of Costs.

(a) Procedure for Taxation in Civil Cases.

The party entitled to recover costs shall file, within thirty (30) days after entry of judgment, a verified bill of costs on the forms provided by the clerk. The verified bill of costs shall include the date on which the party shall appear before the clerk for taxation of the costs and proof of service of a copy on the party liable for the costs. Post-trial motions shall not serve to extend the time within which a party may file a verified bill of costs as provided by this Rule, except on an order extending the time. Forms for the preparation of a bill of costs are available from the office of the clerk or at the court's web page at "www.nynd.uscourts.gov.".

(b) To Whom Payable.

Except in criminal cases, suits for civil penalties for violations of criminal statutes, and government cases not handled by the Department of Justice, all costs taxed are payable directly to the party entitled thereto and not to the clerk, unless otherwise ordered by the court.

(c) Waiver of Costs.

Failure to file a bill of costs within the time provided for in this Rule shall constitute a waiver of the taxable costs.

54.2 Jury Cost Assessment.

See L.R. 47.3.

54.3 Award of Attorney's Fees.

[Reserved]

54.4 Allowances to Attorneys and Receivers.

Every attorney and receiver requesting an allowance for services rendered in a civil action where a receiver has been appointed shall, on filing the receiver's report with the clerk, file a detailed statement of the services and the amount claimed, with a statement of any partial allowance previously made, together with an affidavit of the applicants, stating that no agreement has been made, directly or indirectly, and that no understanding exists for a division of fees between the attorney and the receiver. The petition shall be heard and allowance made on notice as the court shall direct.

55.1 Default Judgment.

(a) By the Clerk.

When a party is entitled to have the clerk enter a default judgment pursuant to Fed. R. Civ. P. 55(b)(1), the party shall submit, with the form of judgment, a statement showing the principal amount due, not to exceed the amount demanded in the complaint, giving credit for any payments, and showing the amounts and dates of payment, a computation of the interest to the day of judgment, a per diem rate of interest, and the costs and taxable disbursements claimed. An affidavit of the party or the party's attorney shall be appended to the statement showing that:

1. The party against whom judgment is sought is not an infant or an incompetent person;

2. The party against whom judgment is sought is not in the military service, or if unable to set forth this fact, the affidavit shall state that the party against whom judgment is sought by default is in the military service or that the party seeking a default judgment is not able to determine whether or not the party against whom judgment by default is sought is in the military service;

3. The party has defaulted in appearance in the action;

4. Service was properly effectuated under Fed. R. Civ. P. 4;

5. The amount shown by the statement is justly due and owing and that no part has been paid except as set forth in the statement required by this Rule; and

6. The disbursements sought to be taxed have been made in the action or will necessarily be made or incurred.

The clerk shall then enter judgment for principal, interest and costs. If, however, the clerk determines, for whatever reason, that it is not proper for a default judgment to be entered, the clerk shall forward the documents submitted in accordance with L.R. 55.1(a) to the assigned judge for review. The assigned judge shall then promptly notify the clerk as to whether the clerk shall properly enter a default judgment under this L.R. 55.1(a).

(b) By the Court.

An application to the court for the entry of a default judgment, pursuant to Fed. R. Civ. P. 55(b)(2), shall be accompanied by a clerk's certificate of the notation of the entry of default in accordance with Fed. R. Civ. P. 55(a) and by a copy of the pleading to which no response has been made. The application also shall be accompanied by an affidavit of the party or the party's attorney setting forth facts as required by L.R. 55.1(a) above.

56.1 Summary Judgment Procedure.

See L.R. 7.1 (a)(3).

57.1 Declaratory Judgment.

[Reserved.]

58.1 Entry of Judgment.

(a) On the verdict of a jury or the decision by the court, a separate document which shall constitute the judgment shall be signed by the clerk and entered. The judgment shall contain no recitals other than a recital of the verdict or any direction by the court on which the judgment is entered. Unless the judge specifically directs otherwise, the clerk shall promptly prepare the judgment. The clerk shall promptly sign and enter it, except that where approval by the judge is required by Fed. R. Civ. P. 58, the clerk shall first submit the judgment to the judge, who shall manifest approval by signing it or noting approval on the margin. The notation of the judgment in the appropriate docket shall constitute the entry of judgment.

(b) The attorney causing the entry of an order or judgment shall append to, or endorse on, it a list of the names of the parties entitled to be notified of the entry and the names and addresses of their respective attorneys if known.

58.2 Entering Satisfaction of Judgment or Decree.

Satisfaction of a money judgment recovered or registered in this district shall be entered by the clerk as follows:

(a) Upon the payment into court of the amount, plus applicable interest, and the payment of the marshal's fees, if any;

(b) Upon the filing of a satisfaction-piece executed and acknowledged by:

1. The judgment-creditor; or

2. The judgment-creditor's legal representative or assigns, with evidence of the representative's authority; or

3. The judgment-creditor's attorney or proctor, if within two years of the entry of the judgment or decree.

(c) If the judgment-creditor is the United States, upon filing of a satisfaction-piece executed by the United States attorney.

(d) In Admiralty, pursuant to an order of satisfaction; but an order shall not be made on the consent of the proctors only, unless consent is given within two years from the entry of the decree to be satisfied.

(e) On the registration of a certified copy of a satisfaction entered in another district.

59.1 New Trial; Amendment of Judgment.

[Reserved.] See L.R. 7.1(g) (Motions for Reconsideration).

60.1 Relief from Judgment or Order.

[Reserved.]

61.1 Harmless Error.

[Reserved.]

62.1 Stay of Proceedings.

[Reserved.]

62.2 Supersedeas Bond.

See L.R. 67.1

63.1 Disability of a Judge.

[Reserved.]

SECTION VIII.
PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

64.1 Seizure of Person or Property.

The court has adopted a Uniform Procedure for Civil Forfeiture Cases which are available from the office of the clerk or at the court's web page at "www.nynd.uscourts.gov."

65.1 Injunctions.

See L.R. 7.1(f).

65.1.1 Sureties.

(a) Whenever a bond, undertaking or stipulation is required, it shall be sufficient, except in bankruptcy or criminal cases, or as otherwise prescribed by law, if the instrument is executed by the surety or sureties only.

(b) Except as otherwise provided by law, every bond, undertaking or stipulation shall be secured by the deposit of cash or government bonds in the amount of the bond, undertaking or stipulation; or be secured by the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury; or the undertaking or guaranty of two individual residents of the Northern District of New York, each of whom owns real or personal property within the district worth double the amount of the bond, undertaking or stipulation, over all the debts and liabilities of each of the residents, and over all obligations assumed by each of the residents on other bonds, undertakings or stipulations, and exclusive of all legal exemptions.

(c) In the case of a bond or undertaking, or stipulation executed by individual sureties, each surety shall attach an affidavit of justification, giving full name, occupation, residence and business address and showing that the surety is qualified as an individual surety under subdivision (b) of this Rule.

(d) Members of the bar, administrative officers or employees of this court, the marshal, or the marshal's deputies or assistants shall not act as surety in any suit, action or proceeding pending in this court. See L.R. 67.3.

65.2 Temporary Restraining Orders.

See L.R. 7.1(f).

66.1 Receiverships.

[Reserved.]

67.1 Deposits in Court.

(a) A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment plus 11% to cover interest and any damage for delay as may be awarded, plus $250 to cover costs.

When a stay shall be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the court, on notice, shall fix the amount of the bond. In all other cases, the court shall, on notice, grant a stay on the terms it deems proper.

On approval, a supersedeas bond shall be filed with the clerk, and a copy thereof, with notice of filing, shall promptly be served upon all parties affected thereby. If the appellee raises

objections to the form of the bond or to the sufficiency of the surety, prompt notice of a hearing before the court on such objections shall be given by the court.

(b) Order Directing the Investment of Funds.

Any order directing the clerk to invest funds deposited with the registry account of the court pursuant to 28 U.S.C. § 2041 shall include the following:

1. The amount to be invested; and

2. The type of interest-bearing account in which the funds are to be invested.

(c) Time for Investing Funds.

The clerk shall take all reasonable steps to invest the funds within ten (10) days of the filing date of the order.

(d) Fee.

Except as otherwise ordered by the court, the clerk, at the time the income becomes available, shall deduct from the income earned on the investment a fee as authorized by the Judicial Conference of the United States and set out by the Director of the Administrative Office.

67.2 Withdrawal of a Deposit Pursuant to Fed. R. Civ. P. 67.

Any person seeking withdrawal of money deposited in the court pursuant to Fed. R. Civ. P. 67 and subsequently deposited into an interest-bearing account or instrument as required by Fed. R. Civ. P. 67 shall provide a completed Internal Revenue Service Form W-9 with the motion papers seeking withdrawal of the funds.

67.3 Bonds and Other Sureties.

(a) General Requirements.

Unless expressly directed otherwise by a judge acting pursuant to the provisions of 18 U.S.C. § 3146 in the supervision of a criminal matter, every bond, recognizance or other undertaking required by law or court order in any proceeding shall be executed by the principal obligor and by one or more sureties qualified as provided by this Rule.

(b) Unacceptable Sureties.

An attorney or the attorney's employee, a party to an action, or the spouse of a party to an action or of an attorney shall not be accepted as surety on a cost bond, bail bond, appeal bond, or any other bond.

(c) Corporate Surety.

A corporate surety on any undertaking in which the United States is the obligee shall be qualified in accordance with the provisions of 6 U.S.C. §§ 6-13, and approved thereunder by the Secretary of the Treasury of the United States. In all other instances, a corporate surety qualified to write bonds in the State of New York shall be an acceptable surety. In all actions, a power of attorney showing authority of the agent signing the bond shall be attached to the bond.

(d) Personal Surety.

Persons competent to convey real property who own real property in the State of New York of an unencumbered value of at least the stated penalty of the bond shall obtain consideration for qualification as surety thereon by attaching thereto a duly acknowledged justification showing: (1) legal description of the real property; (2) a complete list of all encumbrances and liens thereon; (3) its market value based upon recent sales of like property; (4) a waiver of inchoate rights of any character and certification that the real property is not exempt from execution; and (5) certification as to the aggregate amount of penalties of all other existing undertakings, if any, assured by the bondsperson as of that date. The justifications and certifications shall be reviewed by the judge before whom the proceeding is pending for approval or disapproval of the surety.

(e) Cost Bonds.

The court on motion, or upon its own initiative, may order any party to file an original bond for costs or additional security for costs in such an amount and so conditioned as the court by its order shall designate.

(f) Cash Bonds.

Cash bonds shall be deposited into the registry of the court, only upon execution and filing of a written bond sufficient as to form and setting forth the conditions of the bond. Withdrawal of cash bonds so deposited shall not be made except upon written order of the court.

(g) Insufficiency--Remedy.

An opposing party may raise objections to a bond's form or timeliness or the sufficiency of the surety. If the bond is found to be insufficient, the judge shall order that a sufficient bond be filed within a stated time. If the order is not complied with, the case shall be dismissed for want of prosecution or the judge shall take other appropriate action as justice requires.

68.1 Settlement Conferences.

See L.R. 16.1.

68.2 Settlement Procedures.

(a) On notice to the court or the clerk that an action has been settled, and upon confirmation by all parties, the court may issue a judgment dismissing the action by reason of

settlement. The order shall be issued without prejudice to the right to secure reinstatement of the case within thirty (30) days after the date of judgment by making a showing that the settlement was not, in fact, consummated.

(b) If the court decides not to follow the procedures set forth in L.R. 68.2(a), the parties shall file within thirty (30) days of the notification to the court, unless otherwise directed by written order, such pleadings as are necessary to terminate the action. If the required documents are not filed within the thirty (30) day period, the action shall be placed on the dismissal calendar by the clerk.

See also L.R. 17.1 (Actions involving infants and/or incompetents).

69.1 Execution.

[Reserved.]

70.1 Judgment for Specific Acts; Vesting Title.

[Reserved.]

71.1 Process in Behalf of and Against Persons Not Parties.

[Reserved.]

71A.1 Condemnation Cases.

[Reserved.]

72.1 Authority of Magistrate Judges (Amended January 1, 1999)

(a) A full-time magistrate judge is authorized to exercise all powers and perform all duties permitted by 28 U.S.C. § 636(a), (b), and (c) and any additional duties that are not inconsistent with the Constitution and laws of the United States. Part-time magistrate judges are authorized to exercise all of those duties, except that only magistrate judges specifically designated by the court are authorized to perform duties allowed under 28 U.S.C. § 636(c) and any additional duty not inconsistent with the Constitution and laws of the United States.

(b) Any party may appeal from a magistrate judge's determination of a non-dispositive matter within ten (10) days after being served with the magistrate judge's order. The party must file with the clerk of the court, and serve upon all parties, a written notice of appeal which must specifically designate the order or part of the order from which appeal is taken and the basis for the objection. The appellant shall also file with the clerk a designation of the contents of the record on appeal, including the documents, exhibits and other materials to be considered on appeal. All supporting and opposition papers must be filed in accordance with L.R. 7.1(b)(2). The district judge shall consider the appeal in accordance with Fed. R. Civ. P. 72(a). Appeals

will be decided on submission of the papers without oral argument unless otherwise directed by the judge.

(c) Any party may object to a magistrate judge's proposed findings, recommendations, or report issued pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) within ten (10) days after being served with a copy of the magistrate judge's recommendation. The party must file with the clerk of the court, and serve upon all parties, written objections which specifically identify the portions of the proposed findings, recommendations, or report to which objection is made and the basis for the objection. The party shall file with the clerk a transcript of the specific portions of any evidentiary proceedings to which objection is made. Objections may not exceed twenty-five (25) pages without prior approval of the district judge. Response to the objections may be filed and served within ten (10) days after being served with a copy of the objections. Replies by the objecting party are not permitted. The district judge will proceed in accordance with Fed. R. Civ. P. 72(b) or Rule 8(b) of the Rules Governing Section 2254 Petitions, as applicable.

72.2 Duties of Magistrate Judges. (Amended January 1, 1999)

(a) In all civil cases, in accordance with Fed. R. Civ. P. 16, the magistrate judge assigned pursuant to L.R. 40.1 is authorized to hold conferences before trial, enter scheduling orders, and modify scheduling orders . The scheduling order may limit the time to join parties, amend pleadings, file and hear motions, and complete discovery. It may also include dates for a final pretrial conference and other conferences, a trial ready date, a trial date, and any other matters appropriate under the circumstances of the case. A schedule cannot be modified except by order of the court. The magistrate judge may explore the possibility of settlement and hold settlement conferences.

(b) The following procedure will be followed regarding consent of the parties and designation of a magistrate judge to exercise civil trial jurisdiction under 28 U.S.C. § 636(c):

1. Upon the filing of a complaint or petition for removal, the clerk of the court shall promptly provide to the plaintiff, or the plaintiff's attorney, a notice, as approved by the court, informing the parties of their right to consent to have the full-time magistrate judge conduct all proceedings in the case. Proceedings in the case include hearing and determining all pretrial and post-trial motions, including dispositive motions; conducting a jury or non-jury trial; and ordering the entry of a final judgment. Copies of the notice shall be attached to the copies of the complaint and summons when served. Additional copies of the notice shall be furnished to the parties at later stages of the proceedings and shall be included with pretrial notices and instructions. The consent form will state that any appeal lies directly with the Court of Appeals for the Second Circuit.

2. If the parties agree to consent, the attorney for each party or the party, if pro se, must execute the consent form. Executed consent forms shall be filed directly with the clerk of the court. No consent form shall be made available, nor shall its contents be made known, to any district judge or magistrate

judge, unless all of the parties have executed the consent form. No judge or other court official shall attempt to persuade or induce any party to consent to the reference of any matter to a magistrate judge. A district judge, magistrate judge, or other court official may again inform or remind the parties that they have the option of referring the case to a magistrate judge. In reminding the parties about the availability of consent to a magistrate judge, the parties must be informed that they are free to withhold consent without adverse substantive consequences. The parties may agree to a magistrate judge's exercise of civil jurisdiction at any time prior to trial, subject to the approval of the district judge.

3. When consent forms have been executed and filed by all of the parties, the clerk shall then transmit them along with the file to the assigned district judge for approval and referral of the case to a magistrate judge. If the district judge assigns the case to a magistrate judge on consent, authority vests in the magistrate judge to conduct all proceedings and to direct the clerk of the court to enter a final judgment in the same manner as if a district judge presided over the case.

4. Any parties added to an action after consent and reference to a magistrate judge shall be notified by the clerk of their right to consent to the exercise of jurisdiction by the magistrate judge. If an added party does not consent to the magistrate judge's jurisdiction, the action shall be returned to the referring district judge for further proceedings.

(c) Assignment of Magistrate Judges to Serve as Special Masters.

A magistrate judge shall serve as a special master subject to the procedures and limitations of 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. Where the parties consent, a magistrate judge shall serve as a special master in any civil case without regard to the provisions of Fed. R. Civ. P. 53(b).

(d) Other Duties in Civil Actions.

A magistrate judge is also authorized to:

1. Conduct proceedings for the collection of civil penalties of not more than $200 assessed under the Federal Boat Safety Act of 1971, as amended, in accordance with 46 U.S.C. § 4311(d), 12309(c);

2. Conduct examinations of judgment debtors in accordance with Fed. R. of Civ. P. 69;

3. Review petitions in civil commitment proceedings under Title III of the Narcotic Rehabilitation Act;

4. Supervise proceedings conducted pursuant to letters rogatory in accordance with 28 U.S.C. § 1782;

5. Exercise general supervision of the civil calendar of the court, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges; and

6. Administer oaths and affirmations and take acknowledgments, affidavits, and depositions.

72.3 Assignment of Duties to Magistrate Judges. (Amended January 1, 1999)

(a) Upon filing, all civil cases shall be assigned by the clerk of the court to a district judge and a magistrate judge. See L.R. 40.1

(b) All civil cases in which consent forms have been executed and filed pursuant to 28 U.S.C. § 636(c) and L.R. 72.2(b) shall be transmitted to the judge to whom it has been assigned for approval and referral of the case to a magistrate judge, who shall then have the authority to conduct all proceedings and to direct the clerk of the court to enter a final judgment. See L.R. 72.2(b)(3)

(c) Prisoner Cases.

Proceedings commenced by a prisoner shall unless otherwise ordered by the court, be referred to a magistrate for the purpose of reviewing applications, petitions, and motions in accordance with these Rules and 28 U.S.C. § 636.

(d) Social Security Appeal Cases.

Upon the filing of the complaint, social security appeal cases shall be assigned in rotation to the active district judges. These cases shall be referred immediately in rotation to a full-time magistrate judge for the purpose of review and submission of a report-recommendation relative to the complaint or, if the magistrate judge has been assigned to the case pursuant to 28 U.S.C. § 636(c) and L.R. 72.2(b), for final judgment.

(e) Federal Debt Collection Act Cases.

1. Any action brought pursuant to the Federal Debt Collection Act, 28 U.S.C. § 3001 et seq., shall be handled on an expedited basis and brought before a magistrate judge in Syracuse, New York, or to a district judge if no magistrate judge is available, for an initial determination.

2. If appropriate, an order shall be issued directing the clerk to issue the writ being sought, except that an application under 28 U.S.C. § 3203 for a writ of execution in a post judgment proceeding shall not require an order of the court.

3. Thereafter, the clerk is directed to assign geographically a magistrate judge if none was previously assigned in accordance with General Order #31.

4. The assigned magistrate judge shall conduct any hearing that may be requested, decide all non-dispositive issues, and issue a report-recommendation on any and all dispositive issues.

5. The parties shall file written objections to the report-recommendation within twenty (20) days of the filing of same. Without oral argument, the assigned judge shall review the report-recommendation along with any objections that have been filed.

6. On the request for a hearing, the clerk shall make a good faith effort to schedule the hearing within five (5) days of the receipt of the request or "as soon after that as possible," pursuant to 28 U.S.C. § 3101(d)(1).

72.4 Habeas Corpus.

(a) Petitions under 28 U.S.C. §§ 2241, 2254 and 2255 shall be filed pursuant to the Rules Governing § 2254 Cases in the United States District Courts and the Rules Governing § 2255 Proceedings in the United States District Courts.

(b) Subject to the requirement of subsection (c), the original verified petition shall be filed with the clerk of court at Utica, New York. Applications for a writ of habeas corpus made by persons in custody shall be filed, heard and determined in the district court for the district within which they were convicted and sentenced provided, however, that if the convenience of the parties and witnesses require a hearing in a different district, such application shall be transferred to any district that the assigned judge finds or determines to be more convenient.

(c) Before a second or successive application is filed in the District Court, the applicant shall move in the Second Circuit Court of Appeals for an order authorizing the District Court to consider the application.

72.5 Habeas Corpus Petitions Involving the Death Penalty; Special Requirements.
(Amended January 1, 1999)

(a) Applicability.

This rule shall govern the procedures for a first petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 in which a petitioner seeks relief from a judgment imposing the penalty of death. A subsequent filing relating to a particular petition may be deemed a first petition under this Rule if the original filing was not dismissed on the merits. The application of this Rule may be modified by the Judge or Magistrate Judge to whom the petition is assigned. This Rule shall supplement the Rules Governing § 2254 Cases and does not in any regard alter or supplant those rules.

(b) Notices From Office of the Attorney General for the State of New York.

The Office of the Attorney General for the State of New York ("Attorney General") shall send to the clerk (1) prompt notice whenever the New York State Court of Appeals affirms a sentence of death; (2) at least once a month, a list of scheduled executions; and (3) at least once a month, a list of the death penalty appeals pending before the New York State Court of Appeals.

(c) Notice From Petitioner's Counsel.

Whenever counsel determines that a petition will be filed in this court, counsel shall promptly file with the clerk and serve on the Attorney General a written notice of counsel's intention to file a petition. The notice shall state the name of the petitioner, the district in which the petitioner was convicted, the place of petitioner's incarceration, the status of petitioner's state court proceedings and the scheduled date of execution. The notice is for the information of the court only, and the failure to file the notice shall not preclude the filing of the petition.

(d) Counsel.

(1.) Appointment of Counsel.

Each indigent petitioner shall be represented by counsel unless petitioner has clearly elected to proceed pro se and the court is satisfied, after hearing, that petitioner's election is intelligent, competent, and voluntary. Where counsel is to be appointed, such appointment shall be made at the earliest practicable time. A panel of attorneys qualified for appointment in death penalty cases ("qualified panel") will be certified by the active judges of the Northern District of New York.

If state appellate counsel is available to continue representation into the federal courts, and counsel is deemed qualified to do so by the assigned District Judge, there is a presumption in favor of continued representation except when state appellate counsel was also counsel at trial. In light of this presumption, it is expected that appointed counsel who is willing to continue representation and who has been certified by the assigned District Judge as qualified to do so, would ordinarily file a motion for appointment of counsel on behalf of his or her client together with the client's federal habeas corpus petition. If, however, counsel for any reason wishes to confirm appointment before preparing the petition, counsel may move for appointment as described above, before filing the petition.

If state appellate counsel is not available to represent petitioner on federal habeas corpus or if appointment of state appellate counsel would be inappropriate for any reason, the court may appoint counsel upon application of petitioner. The clerk shall have available forms for such application. Counsel may be appointed from the qualified panel. The assigned District Judge may suggest one or more counsel for appointment. If application for appointed counsel is made before a petition is filed, the application shall be assigned to a Judge and Magistrate Judge in the same manner that a non-capital petition would be assigned. The Judge and Magistrate Judge so assigned shall be the Judge and Magistrate Judge assigned when counsel files a petition for writ of habeas corpus.

(2.) Second Counsel.

Appointment and compensation of second counsel shall be governed by the Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases.

(e) Filing.

(1.) General requirement.

Petitions as to which venue lies in this District shall be filed in accordance with the applicable Local Rules. Petitions shall be filled in by printing or typewriting. In the alternative, the petition may be in a legible typewritten or written form which contains all of the information required by that form. All petitions shall (1) state whether petitioner has previously sought relief arising out of the same matter from this court or any other federal court, together with the ruling and reasons given for denial of relief; (2) set forth any scheduled execution date; and (3) contain the wording in full caps and underscored "Death Penalty Case" directly under the case number on each pleading. An original and three (3) copies of the petition shall be filed by counsel for petitioner. A *pro se* petitioner need file only the original.

The clerk will immediately notify the Attorney General's office when a petition is filed.

When a petition is filed by a petitioner who was convicted outside of this District, the court will immediately advise the clerk of the District in which the petitioner was convicted.

(2) Emergency Motions or Applications.

Emergency motions or applications shall be filed with the clerk of the court. If time does not permit the filing of a motion or application in person or by mail, counsel may communicate with the clerk and obtain the clerk's permission to file the motion by facsimile. Counsel should communicate with the clerk by telephone as soon as it becomes evident that emergency relief will be sought from this court. The motion or application shall contain a brief account of the prior actions, if any, of this court and the name of the judge or judges involved in the prior actions.

(f) Assignment to Judicial Officers.

Notwithstanding the general assignment plan of this court, petitions shall be assigned to Judges of the court as follows: (1) the clerk shall establish a separate category for these petitions, to be designated with the title "Capital Case"; (2) all active Judges of this court shall participate in the assignments; (3) petitions in the Capital Case category shall be assigned randomly by the clerk to each of the available active Judges of the court; (4) if a petitioner has previously sought relief in this court with respect to the same conviction, the petition shall, when practical be assigned to the judicial officers who were assigned to the prior proceeding; and (5) pursuant to 28 U.S.C. § 636(b)(1)(B), and not inconsistent with law, Magistrate Judges may be designated by the Court to perform all duties under this rule, including evidentiary hearings.

(g) Transfer of Venue.

Subject to the provisions of 28 U.S.C. § 2241(d), it is the policy of this Court that a petition should be heard in the District in which petitioner was convicted rather than in the District of petitioner's present confinement. See L.R. 72.4(b).

If an order for the transfer of venue is made, the Judge will order a stay of execution which shall continue until such time as the transferee court acts upon the petition or the order of stay.

(h) Stays of Execution.

1. Stay Pending Final Disposition. Upon the filing of a habeas corpus petition, unless the petition is patently frivolous, the District Court shall issue a stay of execution pending final disposition of the matter. Notwithstanding any provision of this paragraph (h), stays of execution shall not be granted, or maintained, except in accordance with law. Thus, the provisions of this paragraph (h) for a stay shall be ineffective in any case in which the stay would be inconsistent with the limitations of 28 U.S.C. § 2262, or any other governing statute.

2. Temporary Stay for Appointment of Counsel. Where counsel in state court proceedings withdraws at the conclusion of the state court proceedings or is otherwise not available or qualified to proceed, the court may designate an attorney who will assist an indigent petitioner in filing pro se applications for appointment of counsel and for temporary stay of execution. Upon the filing of this application, the court shall issue a temporary stay of execution and appoint counsel. The temporary stay will remain in effect for forty-five (45) days unless extended by the court.

3. Temporary Stay for Preparation of the Petition. Where counsel new to the case is appointed, upon counsel's application for a temporary stay of execution accompanied by a specification of nonfrivolous issues to be raised in the petition, the court shall issue a temporary stay of execution unless no nonfrivolous issues are presented. The temporary stay will remain in effect for one hundred twenty (120) days to allow newly appointed counsel to prepare and file the petition. The temporary stay may be extended by the court upon a subsequent showing of good cause.

4. Temporary Stay for Transfer of Venue. (See paragraph (g).)

5. Temporary Stay for Unexhausted Claims. If the petition indicates that there are unexhausted claims for which a state court remedy is still available, petitioner will be granted a sixty (60) day stay of execution in which to seek a further stay from the state court in order to litigate the unexhausted claims in state court. During the proceedings in state court, the proceedings on the petition will be stayed. After the state court proceedings have been completed, petitioner may amend the petition with respect to the newly exhausted claims.

6. Stay Pending Appeal. If the petition is denied and a certificate of appealability for appeal is issued, the court will grant a stay of execution which will continue in effect until the court of appeals acts upon the appeal or the order of stay.

7. Notice of Stay. Upon the granting of any stay of execution, the Clerk will immediately notify the appropriate prison superintendent and the Attorney General. The Attorney General shall ensure that the Clerk has a twenty-four (24) hour telephone number to the superintendent.

(i) Procedures for Considering the Petition.

Unless the Judge summarily dismisses the petition as patently frivolous, the following schedule and procedures shall apply subject to modification by the Court. Requests for

enlargement of any time period in this rule shall comply with the applicable Local Rules of the Court.

1. Respondent shall as soon as practicable, but in any event on or before twenty (20) days from the date of service of the petition, file with the court the following:

(A) Transcripts of the state trial court proceedings;
(B) Appellant's and respondent's briefs on direct appeal to the Court of Appeals, and the opinion or orders of that Court;
(C) Petitioner's and respondent's briefs in any state court habeas corpus proceedings, and all opinions, orders and transcripts of such proceedings;
(D) Copies of all pleadings, opinions and orders in any previous federal habeas corpus proceeding filed by petitioner which arose from the same conviction; and
(E) An index of all materials described in paragraphs (A) through (D) above.

The materials are to be marked and numbered so that they can be uniformly cited. Respondent shall serve this index upon counsel for petitioner or the petitioner *pro se*. If time does not permit, the answer may be filed without attachments (A) through (D) above, but the respondent shall file the necessary copies as soon as possible. If any items identified in paragraphs (A) through (D) above are not available, respondent shall state when, if at all, such missing material can be filed.

2. If counsel for petitioner claims that respondent has not complied with the requirements of paragraph (1.), or if counsel for petitioner does not have copies of all the documents filed with the court by respondent, counsel for petitioner shall immediately notify the court in writing, with a copy to respondent. Copies of any missing documents will be provided to counsel for petitioner by the court.

3. Respondent shall file an answer to the petition with accompanying points and authorities within thirty (30) days from the date of service of the petition. Respondent shall attach any other relevant documents not already filed.

4. Within thirty (30) days after respondent has filed the answer, petitioner may file a traverse.

5. No discovery shall be had without leave of the court.

6. Any request for an evidentiary hearing by either party shall be made within fifteen (15) days from the filing of the traverse, or within fifteen (15) days from the expiration of the time for filing the traverse. The request shall include a specification of which factual issues require a hearing and a summary of what evidence petitioner proposes to offer. Any opposition to the request for an evidentiary hearing shall be made within fifteen (15) days from the filing of the request. The Court will then give due consideration to whether an evidentiary hearing will be held.

(j) Evidentiary Hearing.

If an evidentiary hearing is held, the court will order the preparation of a transcript of the hearing, which is to be immediately provided to petitioner and respondent for use in briefing and argument. Upon the preparation of the transcript, the court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

(k) Rulings.

The court's rulings may be in the form of a written opinion which will be filed, or in the form of an oral opinion on the record in open court, which shall be promptly transcribed and filed. The clerk will immediately notify the appropriate prison superintendent and the Attorney General whenever relief is granted on a petition. The clerk will immediately notify the clerk of the United States Court of Appeals for the Second Circuit by telephone of (1) the issuance of a final order denying or dismissing a petition without a certificate of probable cause for appeal, or (2) the denial of a stay of execution. When a notice of appeal is filed, the clerk will transmit the appropriate documents to the United States Court of Appeals for the Second Circuit immediately.

73.1 Magistrate Judges: Trial by Consent.

Upon the consent of the parties, a magistrate judge shall conduct all proceedings in any civil case, including a jury or non-jury trial, and shall order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). See L.R. 72.2(b)(2)

74.1 Method of Appeal to District Judge in Consent Cases.

[Reserved.]

75.1 Proceedings on Appeal from Magistrate to District Judge under Rule 73(d).

[Reserved.]

76.1 Bankruptcy Cases.

(a) Reference to Bankruptcy Court. All cases under Title 11 of the United States Code, and all proceedings arising under Title 11, or arising in, or related to, a case under Title 11, are referred to the bankruptcy court of this district pursuant to Title 28 U.S.C. § 157.

76.2 Bankruptcy Appeals.

(a) When a notice of appeal is filed with the clerk of the bankruptcy court, and the notice is not timely filed in accordance with Fed. R. Bankr. P. 8002(a), and no motion for extension of time has been filed in accordance with Fed. R. Bankr. P. 8002(c), the bankruptcy clerk shall forward the notice of appeal together with a "Certification of Noncompliance" to the clerk of the district court without assembling the record as provided for in Fed. R. Bankr. P. 8007(b). The notice and certificate shall be filed, assigned a civil action number, and forwarded to a

district court judge for a determination as to whether the notice of appeal was timely filed or the appeal is to be dismissed as untimely. If the district judge makes a determination that the appeal was timely filed or should otherwise be perfected, the bankruptcy clerk shall be notified to complete the record promptly in accordance with Fed. R. Bankr. P. 8007(b).

(b) The clerk of the district court shall issue a standard bankruptcy appeal scheduling order at the time of the filing of the record on appeal, a copy of which shall be provided to the parties, the bankruptcy judge from whom the appeal was taken, and the bankruptcy clerk.

(c) Appeals from a decision of the bankruptcy court shall be in accordance with 28 U.S.C. § 158 and applicable bankruptcy rules. Fed. R. Bankr. P. 8009 respecting the filing of briefs shall not be applicable, and briefs shall be filed in accordance with the scheduling order of the district court. See also General Order #50 (Bankruptcy Appellate Panel Enabling Order which is available from the office of the clerk or at the court's web page at "www.nynd.uscourts.gov."

76.3 Bankruptcy Record of Transmittal, Certificate of Facts, and Proposed Findings Pursuant to Title 11, Section 110(i)

(a) Upon direction of the bankruptcy judge, the clerk of the bankruptcy court shall cause to be filed with the clerk of the district court the designated record of transmittal, which shall consist of certified copies of the Memorandum-Decision, Findings of Fact, Conclusions of Law, bankruptcy docket, and transcript of proceedings which relate to the bankruptcy judge's findings. The bankruptcy court clerk shall also provide the clerk of the district court a list of those individuals to whom the notice of filing shall be given.

(b) Upon receipt of the above, the clerk of the district court shall assign a civil action number, assign a district court judge and issue a scheduling order for the filing of motions pursuant to Title 11, Section 110(i)(1). Copies of the scheduling order shall be served upon those individuals designated by the clerk of the bankruptcy court.

Upon the filing of any motion(s), the clerk of the district court shall schedule and notice all concerned parties of a hearing date. Failure to file motions within the time ordered will be deemed a waiver of the provisions of Title 11, Section 110(i)(1). The clerk of the district court shall prepare and present to the assigned district judge a proposed order pursuant to the provisions of L. R. 41.2.

See also General Order #50 (Bankruptcy Appellate Panel Enabling Order) which is available from the office of the clerk or at the court's web page at "www.nynd.uscourts.gov."

SECTION IX.
DISTRICT COURT AND CLERKS

77.1 Hours of Court.

[Reserved.]

77.2 Orders.

(a) With these exceptions, all orders, whether by consent or otherwise, shall be presented for approval and execution to the assigned judge. The clerk may sign without submission to the assigned judge the following orders:

1. Orders specifically appointing persons to serve process in accordance with Fed. R. Civ. P. 4;

2. Orders on consent for the substitution of attorneys in civil cases where the trial of the action has not been set. See also L.R. 83.2;

3. Orders restoring an action to the court docket after the filing of a demand for trial de novo pursuant to L.R. 83.7-7 (Consensual Arbitration Program);

4. Orders on consent satisfying decrees and orders on consent canceling stipulations and bonds.

(b) After instructed to do so by the assigned judge, the prevailing party shall submit a proposed order which has been approved by the opposing party and which contains the endorsement of the opposing party: "Approved as to form."

1. **Application to Settle an Order.**

When the parties are unable to agree as to the form of the proposed order, the prevailing party shall, on three (3) days notice to all other parties, submit a proposed order and a written explanation for the form of that order. Costs and attorney's fees may be awarded against a party whose unreasonable conduct is deemed to have required the bringing of the motion. The provisions of L.R. 7.1 shall not apply to such motion and oral argument shall not be heard.

77.3 Sessions of Court.

The court shall be in continuous session in Albany, Binghamton, Syracuse, and Utica. Sessions shall from time to time be held in Auburn, Malone and Watertown, or such other place as the court shall, by order, deem appropriate. Jurors shall serve as directed by the court.

77.4 Court Library.

The district court libraries are not open for use by the public.

77.5 Official Newspapers.

All process, notices, and orders required to be published shall be published in the proper county in an official newspaper.

The court shall direct the publication of process, notices, and orders in any other newspaper, upon proper showing, as it shall deem advisable.

The following are designated as official newspapers:

County	Newspaper	City
Albany	Times Union (D)	Albany, NY
Broome	Binghamton Press/Sun Bulletin (D)	Binghamton, NY
Cayuga	Citizen Advertiser (D)	Auburn, NY
Clinton	Press-Republican (D)	Plattsburgh, NY
Chenango	Evening Sun (D)	Norwich, NY
Columbia	Register Star (D)	Hudson, NY
	The Independent (W)	Hillsdale, NY
Cortland	Cortland Standard (D)	Cortland, NY

County	Newspaper	City
Delaware	Walton Reporter (W)	Walton, NY
Essex	Lake Placid News (W)	Lake Placid, NY
Franklin	Adirondack Enterprise (D)	Saranac Lake, NY
	Malone Telegram (D)	Malone, NY
Fulton	Leader Herald (D)	Gloversville, NY
Greene	Catskill Daily Mail (D)	Catskill, NY
Hamilton	Post Star (D)	Glens Falls, NY
Herkimer	Telegram (D)	Herkimer, NY
	Little Falls Times (D)	Little Falls, NY
	Adirondack Echo (W)	Old Forge, NY
Jefferson	Watertown Times (D)	Watertown, NY
	Thousand Island Sun (W)	Alexandria Bay, NY
	Republican Tribune (W)	Carthage, NY
Lewis	Journal Republican (W)	Lowville, NY
Madison	Oneida Dispatch (D)	Oneida, NY
Montgomery	Amsterdam Recorder (D)	Amsterdam, NY
Oneida	Utica Observer Dispatch (D)	Utica, NY
	Utica Daily Press (D)	Utica, NY
	Rome Sentinal (D)	Rome, NY
	Advance Journal (W)	Camden, NY
Onondaga	Post Standard (D)	Syracuse, NY
	Herald Journal (D)	Syracuse, NY
Oswego	Palladium Times (D)	Oswego, NY
Otsego	Oneonta Star	Oneonta, NY
Rensselaer	Times Record (D)	Troy, NY
St. Lawrence	Ogdensburg Journal (D)	Ogdensburg, NY
	Tribune Press (W)	Gouverneur, NY
	Massena Observer (W)	Massena, NY
Saratoga	Saratogian-Tri City News (D)	Saratoga Springs,NY
Schenectady	Schenectady Gazette (D)	Schenectady, NY
	Union Star (D)	
Schoharie	Middleburg News Review (W)	Middleburg, NY
	Times Journal (W)	Cobleskill, NY
Tioga	Tioga County Gazette and Times (W)	Owego, NY
Tompkins	Ithaca Journal (D)	Ithaca, NY
Ulster	The Daily Freeman (D)	Kingston, NY
Warren	Post Star (D)	Glen Falls, NY
	Times (D)	Glen Falls, NY
	Lake George News (W)	Warrensburg, NY
Washington	Whitehall Times (W)	Whitehall, NY

(D) = Daily (W) = Weekly

77.6 Release of Information.

All court personnel, including but not limited to marshals, deputy clerks, court clerks, bailiffs, court reporters, law clerks, secretaries, and probation officers, shall not disclose to any person, without authorization by the court, information divulged in arguments and hearings held in chambers or otherwise outside the presence of the public or any information relating to a pending case that is not part of the public records of the court.

77.7 Official Station of the Clerk.

The official station of the clerk shall be Syracuse. Deputy clerks in such number as are necessary shall be appointed by the clerk and shall be stationed at Albany, Binghamton, Utica, Syracuse and Watertown.

78.1 Motion Days.

Listings of the regularly scheduled motion days for all judges shall be available at each clerk's office. Notice of the regular motion days for all judges shall be provided at the time an action is commenced.

79.1 Custody of Exhibits and Transcripts.

(a) Unless the court orders otherwise, exhibits and transcripts shall not be filed with the clerk. Rather, they shall be retained in the custody of the attorney who produced them in court.

(b) In the case of an appeal or other review by an appellate court, the parties are encouraged to agree with respect to which exhibits and transcripts are necessary for the determination of the appeal. In the absence of agreement and except as provided in this Rule, a party, upon written request of any other party or by court order, shall make available at the office of the clerk all the original exhibits in the party's possession, or true copies, to enable such other party to prepare the record on appeal. At the same time and place, such other party also shall make available all the original exhibits in that party's possession. All exhibits made available at the clerk's office which are designated by any party as part of the record on appeal shall be filed with the clerk, who shall transmit them together with the record on appeal to the clerk of the Second Circuit Court of Appeals. Exhibits and transcripts not so designated shall remain in the custody of the respective attorneys who shall have the responsibility of promptly forwarding them to the clerk of the Second Circuit Court of Appeals on request.

(c) Documents of unusual bulk or weight and physical exhibits, other than documents, shall remain in the custody of the attorney producing them who shall permit their inspection by any party for the purpose of preparing the record on appeal and who shall be charged with the responsibility for their safekeeping and transportation to the Second Circuit Court of Appeals.

(d) Exhibits and transcripts which have been filed with the clerk shall be removed by the party responsible for them (1) if no appeal is taken, within ninety (90) days after a final decision is rendered or (2) if an appeal has been taken, within thirty (30) days after the mandate of the final

reviewing court is filed. Parties failing to comply with this Rule shall be notified by the clerk to remove their exhibits. Upon their failure to do so within thirty (30) days, the clerk shall dispose of them as the clerk sees fit.

79.2 Books and Records of the Clerk.

[Reserved.]

80.1 Stenographic Transcript: Court Reporting Fees.

Subject to the provisions of Fed. R. of Civ. P. 54(d), the expense of any party in obtaining all or any part of a transcript for the use of the court when ordered by it and the expense of any party in obtaining all or any part of a transcript for the purposes of a new trial or for amended findings or for appeals shall be a taxable cost against the unsuccessful party. A fee schedule of transcript rates is available on the court's web page at "www.nynd.uscourts.gov."

81.1 Removal Bonds.

[Reserved.]

81.2 Copies of State Court Proceedings in Removed Actions.

[Reserved.]

81.3 Removed Cases, Demand for Jury Trial.

In an action removed from a state court, a party entitled to trial by jury under Fed. R. Civ. P. 38 shall be accorded a jury trial if a demand is filed and served in accordance with the provisions of Fed. R. Civ. P. 81 and L.R. 38.1.

82.1 Jurisdiction and Venue Unaffected.

[Reserved.]

83.1 Admission to the Bar. (Amended January 1, 1999)

(a) Permanent Admission. A member in good standing of the bar of the State of New York or of the bar of any United States District Court whose professional character is good may be permanently admitted to practice in this court on motion of a member of the bar of this court in compliance with the requirements of this Rule.

An admission packet containing all the required forms is available from the Clerk of the court and on the court's web site at "www.nynd.uscourts.gov."

Each applicant for permanent admission must file, at least ten (10) days prior to the scheduled hearing (unless, for good cause shown, the judge shortens the time), documentation

for admission as set forth below. Ordinarily, the court entertains applications for admission only on regularly scheduled motion days.

Documentation required for permanent admission includes:

1. **A verified petition for admission** stating the following:

   • place of residence and office address;

   • the date(s) when and court(s) where previously admitted;

   • legal training and trial experience;

   • whether the applicant has ever been held in contempt of court, censured, suspended or disbarred by any court and, if so, the facts and circumstances connected therewith; and

   • that the applicant is familiar with the provisions of the Judicial Code (Title 28 U.S.C.), which pertain to the jurisdiction of, and practice in, the United States District Courts; the Federal Rules of Civil Procedure and the Federal Rules of Evidence for the District Courts; the Federal Rules of Criminal Procedure for the District Courts; the Local Rules of the District Court for the Northern District of New York; and the Code of Professional Responsibility of the American Bar Association. The applicant shall further affirm faithful adherence to these Rules and responsibilities.

   A form Verified Petition is available from the clerk's office.

2. **Affidavit of Sponsor.** The sponsor must be a member in good standing of the bar of the Northern District of New York who has personal knowledge of the petitioner's background and character. A form Affidavit of Sponsor is available from the clerk's office.

3. **Attorney Registration Form.** The Registration Form must be in the form prescribed by the clerk, which sets forth the attorney's current residence; office addresses; telephone and fax number(s), if any; and the bars of all states, territories, districts, commonwealths or possessions or other courts of the United States to which the attorney is admitted and the dates of admission. A copy of the Attorney Registration Form is included at Appendix B to these Rules and is available on the court's web page at "www.nynd.uscourts.gov." See subdivision (e) for requirements when information on the Registration Form changes.

4. **Certificate of Good Standing.** The certificate of good standing must be dated within six (6) months of the date of admission.

5. **The Required Fee.** As prescribed by and pursuant to the Judicial Conference of the United States and the Rules of this court, the fee for admission to the bar is **$80.00** (**$50.00** and an additional fee of **$30.00**).

The clerk shall deposit the additional **$30.00** fee required for admission to the bar into the district court Fund. The clerk shall be the trustee of the Fund, and the monies deposited in the Fund shall be used only for the benefit of the bench and bar in the administration of justice. All withdrawals from the Fund require the approval of the Chief Judge or a judge designated by the Chief Judge to authorize the withdrawals.

The admission fee is waived for all attorneys in the employ of the United States Government.

6. **Oath on Admission.** Applicants must swear or affirm that as an attorney and counselor of this court the applicant will conduct himself or herself uprightly and according to law, and that he or she will support the Constitution of the United States. The Oath on Admission, form AO 153, is signed in court at the time of the admission.

(b) Applicants who are not admitted to another United States District Court in New York State must appear with their sponsor for formal admission. If the applicant is admitted to practice in New York State, the Certificate of Good Standing submitted with the application for admission must be from the appropriate New York State Appellate Division. All requirements of subdivision (a) apply.

If the applicant is from outside New York State, the Certificate of Good Standing may be from the highest court of the state or from a United States District Court. All requirements of subdivision (a) apply. Out-of-state applicants must maintain an office in the state in which the applicant is admitted. Upon ceasing to maintain an office in that state, the attorney ipso facto ceases to be a member of the bar of this court.

(c) Applicants who are members in good standing of a United States District Court for the Eastern, Western, or Southern District of New York need not appear for formal admission. The applicant must submit a Certificate of Good Standing from the United States District Court where the applicant is a member and a proposed order granting the admission. A sponsor's affidavit is not required. All other requirements of subdivision (a) apply.

(d) Pro Hac Vice Admission. A member in good standing of the bar of any state, or of any United States District Court, may be admitted pro hac vice to argue or try a particular case in whole or in part. In addition to the requirements of L.R. 83.1(a)(1), a Motion for Pro Hac Vice Admission must be made which includes the case caption of the particular case for which the admission is being sought. See L.R. 10.1(b). In lieu of a written motion for admission, an oral motion may be made by the sponsoring attorney in open court on the record. In that case, the attorney must immediately complete and file the required documents as set forth above.

The pro hac vice admission fee is **$30.00**. The clerk deposits all pro hac vice admission fees into the district court Fund. See L.R. 83.1(a)(5).

While an attorney may be admitted pro hac vice in connection with a particular case, only an attorney permanently admitted to practice in this court may enter appearances for parties, sign stipulations, or receive payments on judgments, decrees or orders.

An attorney admitted pro hac vice must file a written notice of appearance in the case for which the attorney was admitted, in accordance with L.R. 83.2.

(e) Registration Form Changes. Every attorney must file a supplemental statement setting forth any change in the information on the Registration Form within ten (10) days of the change. This supplemental statement should be made by filing a new Registration Form which reflects the new information and which identifies which information changed. Failure to timely file a supplemental Registration Form may result in inability to notify that attorney of developments in the case, or other sanctions in the court's discretion. See L.R. 41.2(b). A copy of the Attorney Registration Form is included at Appendix B to these Rules and is available on the court's web page at "www.nynd.uscourts.gov."

83.2 Appearance and Withdrawal of Attorney. (Amended January 1, 1999)

(a) Appearance. An attorney appearing for a party in a civil case shall promptly file with the clerk a written notice of appearance, however no notice of appearance need be filed if the party that would be filing the notice of appearance is the same individual that has signed the complaint, notice of removal, pre-answer motion, or answer.

(b) Withdrawal. An attorney who has appeared may withdraw only upon notice to the client and all parties to the case and an order of the court, upon a finding of good cause, granting leave to withdraw. If leave to withdraw is granted, the withdrawing attorney must serve a copy of the order upon the affected party and file an affidavit of service.

Unless otherwise ordered by the court, withdrawal of counsel shall not result in the extension of any of the deadlines contained in any case management orders, including the Uniform Pretrial Scheduling Order, see L.R. 16.1(e), or the adjournment of a trial ready or trial date.

83.3 Pro Bono Panel. (Amended January 1, 1999)

(a) Description of Panel. In recognition of the need for representation of indigent parties in civil actions, this court has established the Pro Bono Panel ("Panel") of the Northern District of New York.

1. The Panel shall include those members of the Criminal Assigned Counsel Panel in this court. Any other attorney admitted to practice in this court shall also be expected to participate in periodic training as offered by the court and to accept no more than one pro bono assignment per year.

2. A list of Panel members is to be maintained by the court and shall include the information deemed necessary for the effective administration and assignment of Panel attorneys.

3. The selection of Panel members for assignment shall be made upon determination by the court that the appointment of an attorney is warranted. The judge shall select from the Panel a member who has not received an appointment from the court during the past year and has (i) attended a

training seminar sponsored by this court, (ii) adequate prior experience closely related to the matter assigned, or (iii) accepted criminal (CJA) assignments from the court.

4. Where a pro se party has one or more other cases pending before this court in which an attorney has been appointed, the judge may determine it to be appropriate that the attorney appointed in the other case or cases be appointed to represent the pro se party in the case before the judge.

5. Where the judge finds that the nature of the case requires specific expertise, and among the Panel members available for appointment there are some with the required expertise, the attorney may be selected from among those included in the group or the judge may designate a specific member of the Panel.

6. Where the judge finds that the nature of the case requires specific expertise and none of the Panel members available for appointment has indicated that expertise, the judge may appoint an attorney with the required expertise who is not on the Panel.

(b) Application for Appointment of Attorney.

1. Any application for the appointment of an attorney by a party appearing pro se shall include a form of affidavit stating the party's efforts to obtain an attorney by means other than appointment and indicating any prior pro bono appointments of an attorney to represent the party in cases brought in this court, including both pending and terminated actions.

2. Failure of a party to make a written application for an appointed attorney shall not preclude appointment.

3. Where a pro se litigant, who was ineligible for an appointed attorney at the time of initial or subsequent requests, later becomes eligible by reason of changed circumstances, a subsequent application may be entertained, using the procedures specified above, within a reasonable time after the change in circumstances has occurred.

(c) Factors Used in Determining Whether to Appoint Counsel.

1. On receipt of an application for the appointment of an attorney, the judge assigned to the action shall determine whether an attorney is to be appointed to represent the pro se party. That determination shall be made within a reasonable time after the application is made. Factors to be taken into account in making the determination are as follows:

    1. The potential merit of the claims as set forth in the pleading;

2. The nature and complexity of the action, both factual and legal, including the need for factual investigation;

3. The presence of conflicting testimony calling for an attorney's presentation of evidence and cross-examination;

4. The capability of the pro se party to present the case;

5. The inability of the pro se party to retain an attorney by other means;

6. The degree to which the interests of justice shall be served by appointment of an attorney, including the benefit the court shall derive from the assistance of an appointed attorney;

7. Any other factors the judge deems appropriate.

(d) Order of Appointment. Whenever the judge concludes that the appointment of an attorney is warranted, an order shall be issued directing the appointment of an attorney to represent the pro se party. The order shall be transmitted promptly to the clerk. If service of the summons and complaint has not yet been made, an order directing service by the United States Marshal or by other appropriate method of service shall accompany the appointment order.

(e) Notification of Appointment. After an attorney has been selected, the clerk shall send the attorney a copy of the order of appointment. Copies of the pleadings filed to date, relevant correspondence, and all other relevant documents shall be forwarded to the clerk's office nearest to the attorney and made available for immediate review and copying of the necessary papers without charge for the appointed attorney. In addition to notifying the attorney, the clerk shall also notify all of the parties to the action of the appointment and include with the notification the name, address, and telephone number of the appointed attorney.

(f) Duties and Responsibilities of Appointed Counsel. On receiving notice of the appointment, the attorney shall promptly file an appearance in the action to which the appointment applies unless precluded from acting in the action or appeal, in which event the attorney shall promptly notify the court and the putative client. Promptly following the filing of an appearance, the attorney shall communicate with the newly-represented party concerning the action. In addition to a full discussion of the merits of the dispute, the attorney shall explore with the party any possibilities of resolving the dispute in other forums, including but not limited to administrative forums. If after consultation with the attorney the party decides to prosecute or defend the action, the attorney shall proceed to represent the party in the action unless or until the attorney-client relationship is terminated as provided by these Rules. In the discretion of the court, stand-by counsel may be appointed to act in an advisory capacity. "Stand-by counsel" is not the party's representative; rather, the role of stand-by counsel is to provide assistance to the litigant and the court where appropriate. The court may in its discretion appoint counsel for other purposes.

(g) Reimbursement for Expenses. Pro Bono attorneys who are appointed pursuant to this Rule may seek reimbursement for expenses incident to representation of indigent clients by

application to the court. Reimbursement or advances shall be permitted to the extent possible in light of available resources and, absent extraordinary circumstances, shall not exceed **$1200.00**. Any expenses in excess of **$300.00** should receive prior approval from the court. If good cause is shown, the court may approve additional expenses. Request for reimbursement should be submitted on the Pro Bono Fund Voucher and Request for Reimbursement Form, and accompanied by detailed documentation. Counsel are advised that vouchers submitted in excess of **$1200.00**, absent prior approval from the court, may be reduced or denied. All reimbursements made by withdrawal from the district Fund shall require the approval of the Chief Judge or a judge designated by the Chief Judge to authorize withdrawals. **To the extent that appointed counsel seeks reimbursement for expenses that are recoverable as costs to a prevailing party under Fed R. Civ. P. 54, the appointed attorney must submit a verified bill of costs on the forms provided by the clerk for reimbursement of such expenses.**

(h) Grounds for Relief from Appointment. After appointment, an attorney may apply to be relieved of an order of appointment only on one or more of the following grounds, or on such other grounds as the appointing judge finds adequate for good cause shown:

1. some conflict of interest precludes the attorney from accepting the responsibilities of representing the party in the action;

2. the attorney does not feel competent to represent the party in the particular type of action assigned;

3. some personal incompatibility exists between the attorney and the party or a substantial disagreement exists between the attorney and the party concerning litigation strategy; or

4. in the attorney's opinion the party is proceeding for purposes of harassment or malicious injury or the party's claims or defenses are not warranted under existing law and cannot be supported by a good faith argument for extension, modification or reversal of existing law.

(i) Application for Relief from Appointment. Any application by an appointed attorney for relief from an order of appointment on any of the grounds set forth in this Rule shall be made to the assigning judge promptly after the attorney becomes aware of the existence of such grounds or within such additional period as may be permitted by the judge for good cause shown.

(j) Order Granting Relief from Appointment. If an application for relief from an order of appointment is granted, the judge shall issue an order directing the appointment of another attorney to represent the party. Where the application for relief from appointment identifies an attorney affiliated with the moving attorney who is able to represent the party, the order shall direct appointment of the affiliated attorney with the consent of the affiliated attorney. Any other appointment shall be made in accordance with the procedures set forth in these Rules. Alternatively, the judge shall have the discretion not to issue a further order of appointment, in which case the party shall be permitted to prosecute or defend the action pro se.

83.4 Discipline of Attorneys.

(a) The Chief Judge shall have charge of all matters relating to discipline of members of the bar of this court.

(b) Any member of the bar of this court who shall be convicted of a felony in any State, Territory, other District, Commonwealth, or Possession shall be suspended from practice before this court and, upon the judgment of conviction becoming final, shall cease to be a member of the bar of this court.

1. On the presentation to the court of a certified or exemplified copy of a judgment of conviction, the attorney shall be suspended from practicing before this court and, on presentation of proof that judgment of conviction is final, the name of the attorney convicted shall, by order of the court, be struck from the roll of members of the bar of this court.

(c) Any member of the bar of the Northern District of New York who shall resign from the bar of any State, Territory, other District, Commonwealth or Possession while an investigation into allegations of misconduct is pending shall cease to be a member of the bar of this court.

1. On the presentation to the court of a certified or exemplified copy of an order accepting resignation, the name of the attorney resigning shall, by order of the court, be struck from the roll of members of the bar of this court.

(d) Any member of the bar of the Northern District of New York who shall be disciplined by a court in any State, Territory, other District, Commonwealth, or Possession shall be disciplined to the same extent by this court unless an examination of the record resulting in the discipline discloses:

(A) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(B) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court should not accept as final the conclusion on that subject;

(C) that the imposition of the same discipline by this court would result in grave injustice; or

(D) that the misconduct has been held by this court to warrant substantially different discipline.

1. On the filing of a certified or exemplified copy of an order imposing discipline, the attorney shall, by order of the court, be disciplined to the same extent by this court. It is provided, however, that within thirty (30) days of service on the attorney of the order of discipline imposed by the Northern District of New York, either the attorney

or a bar association designated by the Chief Judge in the order imposing discipline shall apply to the Chief Judge for an order to show cause why the discipline imposed in the Northern District of New York should not be modified on the basis of one or more of the grounds set forth in this Rule.

(A) The term "bar association" as used in this Rule shall mean the following: The New York State Bar Association or any city or county bar association.

(e) Any member of the bar of this court who is convicted of a misdemeanor in any State, Territory, other District, Commonwealth, or Possession, upon such conviction, may be disbarred, suspended, or censured.

1. Upon the filing of a certified or exemplified copy of a judgment of conviction, the Chief Judge may designate a bar association to prosecute a proceeding against the attorney. The bar association shall obtain an order requiring the attorney to show cause within thirty (30) days after service, personally or by mail, why the attorney should not be disciplined. The Chief Judge may, for good cause, temporarily suspend the attorney pending the determination of the proceeding. On the attorney's answer to the order to show cause, the Chief Judge may set the matter for prompt hearing before a court of one or more judges or shall appoint a master to hear and to report findings and a recommendation. After a hearing and report, or if no timely answer is made by the attorney or the answer raises no issue requiring a hearing, the court shall take action as justice requires. In all proceedings, a certificate of conviction shall constitute conclusive proof of the attorney's guilt of the conduct for which the attorney was convicted.

(f) Any attorney who has been disbarred from the bar of a state in which the attorney was admitted to practice shall have their name stricken from the roll of attorneys of this court or, if suspended from practice for a period at such bar, shall be suspended ipso facto for a like period from practice in this court.

(g) In addition to any other sanctions imposed in any particular case under these Local Rules, any person admitted to practice in this court may be disbarred or otherwise disciplined, for cause, after hearing, and as the court may direct. The Chief Judge of the District may appoint a Magistrate Judge or attorney(s) to investigate, advise or assist as to grievances or complaints from any source and as to applications by attorneys for relief from discipline. Other than provided by subsection (b) of this Rule, no censure, suspension, disbarment, or other attorney discipline shall be applied without both notice and an opportunity to be heard and the approval of a majority of the Judges of the court in active service, except that any judge of this court may for cause revoke an admission pro hac vice previously granted by that judge. Complaints or grievances, and any files based on them, shall be treated as confidential. Discipline shall be imposed only upon suitable order of the court which shall or shall not be made available to the public, or published or circulated, as the court shall determine in its discretion.

(h) A visiting attorney permitted to argue or try a particular cause in accordance with L.R. 83.1 who is found guilty of misconduct shall be precluded from again appearing in this court. On entry of an order of preclusion, the clerk shall transmit to the court of the State, Territory,

District, Commonwealth, or Possession where the attorney was admitted to practice a certified copy of the order and of the court's opinion.

(i) Unless otherwise ordered by the court, no action shall be taken pursuant to L.R. 83.4 (e) and (f) in any case in which disciplinary proceedings against the attorney have been instituted in the State.

(j) The Code of Professional Responsibility of the American Bar Association shall be enforced in this court.

(k) Nothing in this Rule shall limit the court's power to punish contempts or sanction counsel in accordance with the Federal Rules of Civil or Criminal Procedure; or the inherent authority of the court to enforce its rules and orders.

83.5 Contempt.

(a) A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Fed. R. Civ. P. 37(b)(2)(D), shall be commenced by the service of a notice of motion or order to show cause.

1. The affidavit on which the notice of motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for resulting damages, and evidence as to the amount of damages that is available to the moving party. A reasonable attorney's fee, necessitated by the contempt proceeding, may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers on which it is based shall be served on the contemnor's attorney; otherwise service shall be made personally in the manner provided for by the Federal Rules of Civil Procedure for the service of summons. If an order to show cause is sought, the order may, on necessity shown, embody a direction to the United States Marshal to arrest and hold the alleged contemnor in bail in an amount fixed by the order, conditioned upon appearance at the hearing and further conditioned upon the alleged contemnor's amenability to all orders of the court for surrender.

(b) If the alleged contemnor puts in issue the alleged misconduct or the resulting damages, the alleged contemnor shall, on demand, be entitled to have oral evidence taken either before the court or before a master appointed by the court. When by law the alleged contemnor is entitled to a trial by jury, a written demand shall be made on or before the return day or adjourned day of the application; otherwise the alleged contemnor shall be deemed to have waived a trial by jury.

(c) If the alleged contemnor is found to be in contempt of the court, an order shall be made and entered:

1. Reciting or referring to the verdict or findings of fact on which the adjudication is based;

2. Setting forth the amount of the damages to which the complainant is entitled;

3. Fixing the fine, if any, imposed by the court, which fine shall include the damages found and naming the person to whom the fine shall be payable;

4. Stating any other conditions, the performance of which shall operate to purge the contempt;

5. Directing in the court's discretion the arrest and confinement of the contemnor by the United States Marshal until the performance of the condition fixed in the order and payment of the fine or until the contemnor is otherwise discharged pursuant to law. The order shall specify the place of confinement. No party shall be required to pay or to advance to the marshal any expenses for the upkeep of the prisoner. On an order of contempt, no person shall be detained in prison by reason of the non-payment of the fine for a period exceeding six months. A certified copy of the order committing the contemnor shall be sufficient warrant to the Marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(d) If the alleged contemnor is found not guilty of the charges, the contemnor shall be discharged from the proceeding and, in the discretion of the court, shall have judgment against the complainant for costs, disbursements and a reasonable attorney's fee.

83.6 Transfer of Cases to Another District.

In a case ordered transferred from this district, the clerk, unless otherwise ordered, shall, upon the expiration of ten (10) days, mail to the court to which the case is transferred:

(1.) Certified copies of the court's opinion and order compelling the transfer and of the docket entries in the case; and

(2.) The originals of all papers on file in the case except for the opinion ordering the transfer of the action.

SECTION X.
ALTERNATE DISPUTE RESOLUTION
AND GENERAL PROVISIONS

83.7 Arbitration.

83.7-1 Scope and Effectiveness of Rule.

This Rule governs the consensual arbitration program for referral of civil actions to court-annexed arbitration. It may remain in effect until further order of the court. Its purpose is to establish a less formal procedure for the just, efficient and economical resolution of disputes, while preserving the right to a full trial on demand.

83.7-2 Actions Subject to this Rule.

The clerk of the court shall notify the parties in all civil cases, except as otherwise directed by these Rules, that they may consent to non-binding arbitration under this Rule. The notice shall be furnished to the parties at pretrial/scheduling conferences or shall be included with pretrial conference notices and instructions. Consent to arbitration under this Rule shall be discussed at the pretrial/scheduling conference. No party or attorney shall be prejudiced for refusing to participate in arbitration. The court shall allow the referral of any civil action pending before it to the arbitration process if the parties consent. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing the form with the clerk of court within ten (10) days after receipt of the form by the parties. Consent shall be freely and knowingly entered into.

83.7-3 Referral to Arbitration.

(a) Time for Referral.

Every action subject to this Rule shall be referred to arbitration by the clerk in accordance with the procedures under this Rule twenty (20) days after the filing of the last responsive pleading or within twenty (20) days of the filing of a stipulated consent order referring the action to arbitration, whichever event occurs last, except as otherwise provided. If any party notices a motion to dismiss under the provisions of Fed. R. Civ. P. 12(a) and/or (b), or a motion to join necessary parties pursuant to the Federal Rules of Civil Procedure prior to the expiration of the twenty (20) day period, the motion shall be heard by the assigned judge and further proceedings under this Rule shall be deferred pending decision on the motion. If the action is not dismissed on the motion, it shall be referred to arbitration twenty (20) days after the filing of the decision.

Motions for summary judgment pursuant to Fed. R. Civ. P. 56 shall be filed and served within twenty (20) days following the close of discovery. The filing of a Rule 56 motion shall defer further proceedings under this Rule pending decision on the motion.

(b) Authority of Assigned Judge.

Notwithstanding any provision of this Rule, every action subject to this Rule shall be assigned to a judge upon filing in the normal course, in accordance with the court's assignment Plan. The assigned judge shall have authority to conduct status and settlement conferences, hear

motions and in all other respects supervise the action in accordance with these Rules notwithstanding its referral by consent to arbitration.

(c) Relief from Referral.

Any party shall request relief from the operation of this Rule by filing with the court a motion for the relief within twenty (20) days after entry of the initial stipulated consent order which refers the case for arbitration. The assigned judge shall, sua sponte, exempt an action from the application of this rule where the objectives of arbitration would not be realized because (1) the case involves complex or novel legal issues, (2) legal issues predominate over factual issues, or (3) for other good cause.

83.7-4 Selection and Compensation of Arbitrator.

(a) Selection of Arbitrators.

The clerk shall maintain a roster of arbitrators qualified to hear and determine actions under this Rule. Arbitrators shall be selected from time to time by the court from applications submitted by or on behalf of attorneys willing to serve. To be eligible for selection by the court, an attorney (1) shall have been admitted to practice for not less than five (5) years; (2) shall be a member of the bar of this court or a member of the New York bar and reside within the Northern District of New York; and (3) shall either (i) for not less than five (5) years have devoted 50% or more of the attorney's professional time to matters involving litigation, or (ii) have substantial experience serving as a "neutral" in dispute resolution proceedings, or (iii) have substantial experience negotiating consensual resolutions to complex problems. Each attorney shall, upon selection, take the oath or affirmation prescribed in 28 U.S.C. § 453 and shall complete any training required by the court.

(b) Selection of the Panel.

Whenever an action has been referred to arbitration through consent of the parties pursuant to this Rule, the parties shall nominate the arbitrator or arbitrators whom they select to serve as an arbitrator(s) in full compliance with L.R. 83-7-4 (a), or the clerk shall promptly furnish to each party a list of arbitrators whose names shall have been drawn at random from the roster for the division in which the case is pending. If the parties have elected to proceed with a **single** arbitrator, the clerk shall provide five (5) names for the selection process. If the parties have elected to proceed with a panel of **three** (3) arbitrators, the clerk shall provide seven (7) names for the selection process.

1. Each side shall be entitled to strike two names from the list. The list shall be signed by all parties and returned to the clerk within ten (10) days of receipt. Failure of the parties to timely notify the clerk of strikes shall result in the clerk's selection of the panel.

2. The clerk shall promptly notify the person or persons whose names are not stricken. If the parties have elected to proceed with a single arbitrator, and the arbitrator selected is unable or unwilling to serve, the process of selection under this Rule shall begin anew. If the parties have elected to proceed with a panel of arbitrators and any

person selected is unable or unwilling to serve, the clerk shall select an additional name at random who shall constitute the third member of the panel. If the clerk is still unable to form a panel of three arbitrators for any reason, the process of selection under this Rule shall begin anew. When a single arbitrator, or when three of the selected arbitrators have agreed to serve, the clerk shall promptly send written notice of the membership of the panel to each arbitrator and the parties.

(c) Disqualification.

No person shall serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. § 455 (conflict of interest) exist or in good faith shall be believed to exist.

(d) Withdrawal by Arbitrator.

Any person whose name appears on the roster maintained in the clerk's office may ask at any time to have their name removed or, if selected to serve on a panel, decline to serve but remain on the roster.

(e) Compensation and Reimbursement.

Arbitrators shall be paid $250.00 per day or portion of each day of hearing in which they participate serving as a single arbitrator or $100.00 for each day or portion of a day if serving as a member of a panel of three (3). Compensation for arbitrator's services outside of the hearing shall be supported by an affidavit setting forth in detail the time required for pre and post-hearing matters. When the arbitrators file their decision, each shall submit a voucher, on the form prescribed by the clerk, for payment by the Administrative Office of the United States Courts of compensation and out-of-pocket expenses necessarily incurred in the performance of their duties under this Rule. No reimbursement shall be made for the cost of office or other space for the hearing.

83.7-5 Arbitration Hearings.

(a) Hearing date.

After an answer is filed in a case in which the parties have consented to arbitration and the consent has been approved by the court and on completion of the selection of the panel by the parties, the arbitration clerk shall send a notice to the attorney setting forth the date, time and location for the arbitration hearing. The date of the arbitration hearing set forth in the notice shall be approximately five (5) months but in no event later than 180 days from the date the answer was filed, except that the arbitration proceeding shall not, in the absence of the consent of the parties, commence until thirty (30) days after the disposition by the district court of any motion to dismiss the complaint, motion for judgment on the pleadings, or motion to join necessary parties if such a motion was filed and served within twenty (20) days after the filing of the last responsive pleading. Motions for summary judgment pursuant to Fed. R. Civ. P. 56 shall be filed in accordance with 83.7-3(a). The 180-day and twenty (20) day periods specified in L.R. 83.7 may be modified by the court for good cause shown. The notice shall also advise the attorneys that they may agree to an earlier date for the arbitration hearing provided the arbitration clerk is notified within thirty (30) days of the date of the notice.

The notice shall also advise the attorneys that they have 120 days to complete discovery unless the judge to whom the case has been assigned orders a shorter or longer period for discovery. If a third party has been brought into the action, this notice shall not be sent until an answer has been filed by the third party.

(b) Upon entry of the order designating the arbitrator(s), the arbitration clerk shall send to each arbitrator a copy of the order designating the arbitrator, a copy of the court docket sheet and a copy of the guidelines for arbitrators. On receipt of the notice scheduling the case to proceed to arbitration and appointing an arbitrator, the plaintiff's attorney shall promptly forward to the arbitrator copies of all pleadings, including any counterclaim or third party complaint and respective answer. Thereafter, and at least ten (10) days prior to the arbitration hearing, each attorney shall deliver to the arbitrator and to the adverse attorney pre-marked copies of all exhibits, including expert reports and all portions of depositions and interrogatories to which reference shall be made at the hearing (but not including documents intended solely for impeachment).

(c) Default of a Party.

The arbitration hearing shall proceed in the absence of any party who, after notice, fails to be present. If a party fails to participate in the arbitration process in a meaningful manner, the arbitrator(s) shall make that determination and shall support it with specific written findings filed with the clerk. The judge to whom the action is assigned shall then conduct a hearing, on notice to all attorneys and personal notice to any party adversely affected by the arbitrator's determination, and may impose any appropriate sanctions, including, but not limited to, the striking of any demand for a trial de novo filed by that party.

(d) Conduct of Hearing.

The arbitrator is authorized to administer oaths and affirmations and all testimony shall be given under oath or affirmation. Each party shall have the right to cross-examine witnesses except as otherwise provided. In receiving evidence, the arbitrator shall be guided by the Federal Rules of Evidence. These rules however shall not preclude the arbitrator from receiving evidence which the arbitrator considers to be relevant and trustworthy and which is not privileged. A party desiring to offer a document otherwise subject to hearsay objections at the hearing shall serve a copy on the adverse party not less than ten (10) days in advance of the hearing indicating intent to offer it as an exhibit. Unless the adverse party gives written notice in advance of the hearing of intent to cross-examine the author of the document, any hearsay objection to the document shall be deemed waived. Attendance of witnesses and production of documents shall be compelled in accordance with Fed. R. Civ. P. 45.

(e) Transcript or Recording.

A party may cause a transcript or recording to be made of the proceedings at its expense but shall, at the request of the opposing party, make a copy available to the party at no charge, unless the parties have otherwise agreed. Except as provided in L.R. 83.7-7(c), no transcript of the proceeding shall be admissible in evidence at any subsequent de novo trial of the action.

(f) Place of Hearing.

Hearings shall be held at any location within the Northern District of New York designated by the arbitrator. Hearings may be held in any courtroom or other room in any federal courthouse made available to the arbitrator by the clerk's office. When no room is available, the hearing shall be held at any suitable location selected by the arbitrator. In making the selection, the arbitrator shall consider the convenience of the panel, the parties and the witnesses. The date for the hearing shall not be continued except for extreme and unanticipated emergencies.

(g) Time of Hearing.

Unless the parties agree otherwise, hearings shall be held during normal business hours.

(h) Authority of Arbitrator.

The arbitrator shall be authorized to make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing before the arbitrator. Any two members of a panel shall constitute a quorum; but, unless the parties stipulate otherwise, the concurrence of a majority of the entire panel shall be required for any action or decision by the panel.

(i) Ex Parte Communication.

There shall be no ex parte communication between an arbitrator and any attorney or party on any matter touching the action except for purposes of scheduling or continuing the hearing.

83.7-6 Award and Judgment.

(a) Filing of Award.

The arbitrator shall file the award with the clerk's office promptly following the close of the hearing and in any event not more than ten (10) days following the close of the hearing. As soon as the award is filed, the clerk shall serve copies on the parties. In addition, immediately after receiving a copy of the arbitration award, the party that prevailed in the arbitration shall serve a copy of the award on the other parties and shall promptly file proof of service.

(b) Form of Award.

The award shall state clearly and concisely the name or names of the prevailing party or parties, the party or parties against which it is rendered, and the precise amount of money and other relief, if any, awarded. It shall be in writing and, unless the parties stipulate otherwise, be signed by the arbitrator or by at least two members of a panel. No panel member shall participate in the award without having attended the hearing.

(c) Entry of Judgment on Award.

Unless a party has filed a demand for a trial de novo (or a notice of appeal which shall be treated as a demand for trial de novo) within thirty (30) days of the filing of the arbitration award, the clerk shall enter judgment on the arbitration award in accordance with Fed. R. Civ. P. 58. A judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

(d) Sealing of Arbitration Awards.

The contents of any arbitration award made under this Rule shall not be made known to any judicial officer who might be assigned to preside at the trial of the case or to rule on potentially dispositive motions

1. Until the district court has entered final judgment in the action or the action has been otherwise terminated;

2. Except for purposes of preparing the report required by section 903(b) of the Judicial Improvements and Access to Justice Act; or

3. Except as necessary for the court to determine whether to assess costs or attorney's fees under 28 U.S.C. § 655.

83.7-7 Trial De Novo.

(a) Time for Demand.

If either party files and serves a written demand for a trial de novo within thirty (30) days of entry of judgment on the award, that judgment shall immediately be vacated by the clerk and the action shall proceed in the normal manner before the assigned judge.

(b) Restoration to Court Docket.

On a demand for a trial de novo, the action shall be restored to the docket of the court, trial ready, and treated for all purposes as if it had not been referred to arbitration. In such a case, any right of trial by jury that a party otherwise would have had, as well as any place on the court calendar which is no later than that which a party otherwise would have had, is preserved.

(c) Limitation on Admission of Evidence.

At the trial de novo, the court shall not admit any evidence that an arbitration proceeding has occurred, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding unless:

1. The evidence would otherwise be admissible in the court under the Federal Rules of Evidence; or

2. The parties have stipulated otherwise.

(d) Arbitrator's Costs.

The party requesting a trial de novo shall deposit the cost of the arbitrator's services as a prerequisite to the trial. If the requesting party fails to obtain judgment in an amount which, exclusive of interest and costs, is more favorable to that party, such funds so paid shall be retained by the clerk. However, if that party is successful in obtaining a more favorable result, the prepaid costs shall be reimbursed.

(e) Opposing Party's Costs.

If a party has rejected an award and the action proceeds to trial, that party shall pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the arbitrator's award on that claim. If the opposing party has also rejected that award, however, a party is entitled to costs only if the verdict is more favorable to that party than the arbitrator's award:

1. Actual costs include those costs and fees taxable in any civil action and attorney's fees for each day of trial not to exceed **$500.00.**

2. For good cause shown, the court shall order relief from payment of any or all costs.

3. The provisions of L.R. 83.7-7 (d) and (e) shall not apply to claims to which the United States or one of its agencies is a party.

83.7-8 Cases Pending Prior to the Implementation of Arbitration.

(a) Notwithstanding the provisions of the rules set forth above, each district judge shall select cases from the docket currently in process and notify the attorneys involved of the availability of the consensual arbitration program. A case shall qualify for referral to arbitration if it complies with the provisions of this Rule.

83.8 Number of Experts in Patent Cases.

On the trial of a patent case, whether in open court or by deposition, or partly in each way, only one expert witness shall be allowed to each side, unless leave for additional experts has been obtained from the court on motion made and cause shown.

83.9 Commission to Take Testimony.

(a) Except as otherwise provided by law, in all actions or proceedings where the taking of depositions of witnesses or of parties is authorized, the procedure for obtaining and using the depositions shall be as provided in the Federal Rules of Civil Procedure for the United States District Courts. The party seeking the deposition shall furnish the officer to whom the

commission is issued with a copy of the Federal Rules of Civil Procedure pertaining to discovery.

(b) Upon receipt of a deposition, the clerk, unless otherwise ordered, shall open and file it promptly.

83.10 Student Practice.

General Order #33 pertains to the rules regarding student practice in the Northern District of New York. A copy of General Order #33 may be obtained from the office of the clerk or at the court's web page at "www.nynd.uscourts.gov.".

83.11-1 Mediation.

1. Purpose. The purpose of this Rule is to provide a supplementary procedure to the court's existing alternative dispute resolution procedures. It provides for an earlier resolution of civil disputes resulting in savings of time and cost to litigants and the court without sacrificing the quality of justice rendered or the right of litigants to a full trial on all issues not resolved through mediation.

2. Definitions. Mediation is a process by which an impartial person, the mediator, facilitates communication between disputing parties to promote understanding, reconciliation and settlement. The mediator is an advocate for settlement and uses the mediation process to help the parties fully explore any potential area of agreement. The mediator does not serve as a judge or arbitrator and has no authority to render any decision on any disputed issue or to force a settlement. The parties themselves are responsible for negotiating any resolution(s) to their dispute.

83.11-2 Designation and Qualifications of Mediators.

1. Designation of Mediators. The judges of this court may authorize those persons who are eligible and qualified to serve as mediators under this Rule in such numbers as the court shall deem appropriate. The court may withdraw such designation of any mediator at any time. Applications for designation as an ADR panel member are available at the office of the clerk.

2. List of Mediators. The Alternative Dispute Resolution clerk (ADR clerk) shall maintain a list of court approved mediators that shall be made available to counsel and the public upon request.

3. Required Qualifications of Mediators.

a. An individual may be designated as a mediator if he or she:

(1) has practiced law for at least five years; and

(2) is a member in good standing of the bar of this court or of the New York bar and resides within the Northern District of New York; or

(3) is a professional mediator who would otherwise qualify as a special master or is determined by the court to be competent to perform the duties of the mediator

and has completed appropriate training in the process of mediation as the court may from time to time determine and direct.

(4) Shall attend and complete a mediation training course sponsored by the court.

b. Upon court approval as a mediator, every mediator shall take the oath prescribed by 28 U.S.C.§ 453.

c. No person shall serve as a mediator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist, or may in good faith be believed to exist. Additionally, any mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144. Furthermore, the mediator has a continuing obligation to disclose any information which may cause a party or the court to believe, in good faith, that such mediator should be disqualified.

4. Removal from the Panel. Membership in the ADR Panel is a privilege, not a right, which may be terminated at any time by the Board of Judges, as they, in their sole discretion may determine.

5. Service to the Bar and Court Provided by Mediators.

The individuals serving as mediators in the Northern District of New York perform their mediation duties as a pro bono service for the court, litigants and the bar.

83.11-3 Actions Subject to Mediation.

1. The court may refer any civil action (or any portion thereof) to mediation under this rule;

a. By order of referral; or
b. On the motion of any party; or
c. By consent of parties.

2. Any civil action or claim referred to mediation pursuant to this Rule may be withdrawn from mediation by application to the assigned judge at least 10 days prior to the scheduled mediation session.

3. Notwithstanding the provisions of the Rules set forth above, each judge shall select cases from the docket currently pending and notify the attorneys involved of the availability of the mediation program.

83.11-4 Procedures for Referral, Selecting the Mediator, and Scheduling the Mediation Session.

1. The possibility and appropriateness of mediation under this rule shall be discussed at the initial status/scheduling conference of the case that is held in accordance with the provisions of General Order #25.

2. In every case in which the court determines that referral to mediation is appropriate pursuant to 83.11-3 of this Rule, the court shall enter an order of reference which shall define the period of time during which the mediation session shall be conducted. The court intends that mediation under this Rule occur at the earliest practical time in an effort to encourage earlier, less costly resolutions of disputes. Referral to mediation under this Rule shall not delay or stay other proceedings, including but not limited to discovery, unless so ordered by the court.

3. Within 10 days of the order of reference, parties are to select a mediator of their choice from a list of mediators available from the court and submit the selection to the ADR clerk in the clerk's office. If no such selection is made in a timely manner or if the parties cannot agree upon the mediator, the ADR clerk shall make the selection for them. The ADR clerk shall work with the selected mediator and counsel of record to set a mutually agreeable date for the mediation within the time prescribed by the order of reference.

4. Mediation sessions under this Rule may be held in any available court space or in any other suitable location agreeable to the mediator and the parties. Consideration shall be given to the convenience of the parties and to the cost and time of travel involved.

5. There shall be no continuance of a mediation session beyond the time set in the referral order except by order of this court upon a showing of good cause. If any rescheduling occurs within the prescribed time, the ADR clerk must be notified and the location of the rescheduled hearing must be selected.

6. Any settlement prior to the scheduled mediation shall be promptly reported to the mediator and to the ADR clerk.

83.11-5 The Mediation Session.

1. Memorandum for Mediation. At least two days prior to the mediation session, each party shall provide to the mediator and all other such parties a "memorandum for mediation". This memo shall:

a. State the name and role of each person expected to attend;
b. Identify each person with full settlement authority;
c. Include a concise summary of the parties' claims or defenses;
d. Discuss liability and damages; and
e. State the relief sought by such party.

The summary shall not exceed five pages and shall not be filed in the case or otherwise made part of the court file.

2. Attendance Required. The attorney who is expected to try the case for each party shall appear, and shall be accompanied by an individual with authority to settle the lawsuit. The latter shall be the parties (if natural persons) or representatives of parties that are not natural persons. This latter party may not be counsel (except in-house counsel). Attorneys for the parties shall notify other interested parties such as insurers or indemnitors who shall attend and are subject to the provisions of this Rule. Only the assigned judge may excuse attendance of any

attorney, party, or party's representative. Any such request must be made in writing to the presiding judge a minimum of 48 hours in advance of the mediation session.

3. Good Faith Participation in the Process. Parties and counsel shall participate in good faith, without any time constraints, and put forth their best efforts toward settlement. Typically, the mediator will meet initially with all parties to the dispute and their counsel in a joint session, and thereafter separately with each party and their representative. This process permits the mediator and the parties to explore the needs and interests underlying their respective positions, generate and evaluate alternative settlement proposals or potential solutions, and consider interests that may be outside the scope of the stated controversy including matters that may not be addressed by the court. The parties will participate in crafting a resolution of the dispute.

4. Confidentiality. Mediation is regarded as a settlement procedure and is confidential and private. No participant may disclose, without consent of the other parties, any confidential information acquired during mediation. There shall be no stenographic or electronic record, e.g., audio or video, of the mediation process.

a. All written and oral communications made in connection with or during the mediation session are confidential.

b. No communication made in connection with or during any mediation session may be disclosed or used for any purpose in any pending or future proceeding in the U.S. District Court for the Northern District of New York.

c. Privileged and confidential status is afforded all communications made in connection with the mediation session, including matters emanating from parties and counsel as well as mediators' comments, assessments, and recommendations concerning case development, discovery, and motions. Except for communication between the judge and the mediator regarding noncompliance with program procedures (*as set forth in this Rule*), there will be no communications between the court and the mediator regarding a case that has been designated for mediation. The parties will be asked to sign an agreement of confidentiality at the beginning of the mediation session.

d. Parties, counsel and mediators may respond to inquiries from authorized court staff which are made for the purpose of program evaluation. Such responses will be kept in strict confidence.

e. The mediator may not be required to testify in any proceeding relating to or arising out of the matter in dispute. Nor may the mediator be subject to process requiring disclosure of information or data relating to or arising out of the matter in dispute.

f. Immunity: A mediator, as well as the Mediation Administrator, shall be immune from claims arising out of acts or omissions incident to service as a court appointee in this mediation. *See e.g. Wagshal v. Foster, 28 F. 3d 1249 (D.C. Cir 1994).*

5. **Default.** Subject to the approval of the mediator, the mediation session may proceed in the absence of a party, who, after due notice, fails to be present. Sanctions may be imposed by the court on any party who, absent good cause shown, fails to attend or participate in the mediation session in good faith in accordance with this rule.

6. Conclusion of the Mediation Session. The mediation shall be concluded:

a. By resolution and settlement of the dispute by the parties;

b. By adjournment for future mediation by agreement of the parties and the mediator; or

c. Upon declaration of impasse by the mediator that future efforts to resolve the dispute are no longer worthwhile.

Unless otherwise authorized by the court, mediation sessions shall be concluded at least ten days prior to any final pretrial conference scheduled by the court.

If the mediation is adjourned by agreement for further mediation, the additional session shall be concluded within the time ordered by the court.

83.11-6 Mediation Report; Notice of Settlement or Trial.

1. Immediately upon conclusion of the mediation, the mediator shall file a mediation report with the ADR clerk indicating only whether the case settled, settled in part, or did not settle.

2. In the event the parties reach an agreement to settle the case, the representatives for each party shall promptly notify the ADR clerk and promptly prepare and file the appropriate stipulation of dismissal.

3. If the parties reach a partial agreement to narrow, withdraw or settle some but not all claims, a stipulation concisely setting forth the resolved claims shall be submitted within five days of the mediation. The parties shall be bound by the stipulation.

4. If the mediation session does not conclude in settlement of all the issues in the case, the case will proceed toward trial pursuant to the scheduling orders entered in the case.

83.12-1 Early Neutral Evaluation.

1. The ENE Process. Early neutral evaluation (ENE) is a process in which parties obtain from an experienced neutral (an "evaluator"), a nonbinding, reasoned, oral evaluation of the merits of the case. The first step in the ENE process involves the court appointing an evaluator who has expertise in the area of law in the case. After essential information and position statements are exchanged early in the pretrial period (usually within 150 to 200 days after a complaint has been filed), the evaluator convenes an ENE session that typically lasts about two hours. At the ENE meeting, each side briefly presents the factual and legal basis of its position. The evaluator may ask questions of the parties and help them identify the main issues in dispute and also areas of agreement. He or she may also help the parties explore

options for settlement. If settlement does not occur, the evaluator then offers his or her opinion as to the settlement value of the case, including the likelihood of liability and the likely range of damages. With the benefit of this assessment, the parties are again encouraged to discuss settlement, with or without the evaluator's assistance. They may also explore ways of narrowing the issues in dispute, exchanging information about the case or otherwise preparing efficiently for trial.

The evaluator has no power to impose a settlement or to dictate any agreement regarding the pretrial management of the case. The ENE process, whether or not it results in settlement, is confidential.

83.12-2 Designation and Qualifications of Evaluators.

1. Designation of Evaluators. The judges of this court may authorize those persons who are eligible and qualified to serve as evaluators under this rule in such numbers as the court shall deem appropriate. The court may withdraw such designation of any evaluator at any time. Applications for designation as an ADR panel member are available at the office of the clerk.

2. List of Evaluators. The ADR clerk shall maintain a list of court approved evaluators that shall be made available to counsel and the public upon request.

3. Required Qualifications of Evaluators.

a. An individual may be designated as an Early Neutral Evaluator if he or she:

(1) Has practiced law for at least fifteen years; and
(2) Is a member in good standing of the bar of this court or of the New York bar and resides within the Northern District of New York; or
(3) Is a professional who is determined by the court to be competent to perform the duties of the evaluator and has completed appropriate training in the process of Early Neutral Evaluation as the court may from time to time determine and direct.

b. Upon court approval as an evaluator, every evaluator shall take the oath prescribed by 28 U.S.C. § 453.

c. No person shall serve as an evaluator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist, or may in good faith be believed to exist. Additionally any evaluator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144. Furthermore, the evaluator has a continuing obligation to disclose any information which may cause a party or the court to believe in good faith, that such evaluator should be disqualified.

4. Removal from the Panel. Membership in the ADR Panel is a privilege, not a right, which may be terminated at any time by the Board of Judges, as they, in their sole discretion may determine.

5. Service to the Bar and Court Provided by Evaluators. The individuals serving as evaluators in the Northern District of New York perform their duties as a pro bono service to the court, litigants, and the bar.

83.12-3 Actions Subject to Early Neutral Evaluation.

1. The court may refer any civil action (or any portion thereof) to Early Neutral Evaluation under this rule:

a. By order of referral;
b. On the motion of any party; or
c. By consent of the parties.

2. Any civil action or claim referred to the Evaluation Process pursuant to this Rule may be withdrawn from the program by application to the assigned judge at least 10 days before the scheduled evaluation session.

3. Notwithstanding the provisions of the rules set forth above, each judge shall select cases from the docket currently pending and notify the attorneys involved of the availability of the Early Neutral Evaluation program.

4. When a case is designated for ENE, the ADR clerk will provide counsel with copies of the judge's designation order, a listing by division of the available early neutral evaluators, and a copy of the ENE procedure guide.

83.12-4 Administrative Procedures and Requirements.

A. In most cases, the ENE order will be issued early enough in the pretrial period to allow the ENE session to be held between 150 and 200 days from the filing of the complaint.

B. When the ADR clerk receives a copy of a judicial order designating a case for ENE, the parties will be given a date by which they must choose an evaluator from the list provided to counsel. If selection of an evaluator is not made by the designated date, the ADR clerk will assign an evaluator with expertise in the subject matter of the lawsuit and notify counsel.

C. The evaluator will contact all attorneys and set the date and place of the evaluation session. Whenever possible, the ENE session shall be held within 150 to 200 days of the filing of the complaint and within 45 days of the date the ADR clerk notifies counsel of the identity of the evaluator.

D. The ADR clerk and evaluators shall schedule ENE proceedings in a manner that does not interfere in any way with the management of case processing or actions of the referring judge. No party may avoid or postpone any obligation imposed by the order of reference on any ground related to the ENE program.

83.12-5 Evaluation Statements.

A. No later than 10 calendar days prior to the ENE session, each party shall submit directly to the evaluator, and shall serve on all other parties, a written evaluation statement not to exceed 10 pages *excluding exhibits and attachments*.

Such statements must:

1. Identify person(s), in addition to counsel, who will attend the ENE session and who have decision making authority;

2. Address whether the case involves legal or factual issues the early resolution of which might reduce the scope of the dispute or contribute significantly to settlement negotiations; and

3. Identify the discovery that will contribute most to meaningful settlement negotiations.

B. Parties may also identify persons whose presence at the ENE session might improve significantly the productivity of the session.

C. Parties shall attach to the evaluation statements, copies of key documents out of which the suit arose (*e.g., contracts*) or materials that might advance the purposes of the ENE session (*e.g., medical reports*).
Written evaluation statements are NOT to be filed with the Court. Evaluation statements are considered confidential between the parties and the evaluator.

83.12-6 Attendance at ENE Sessions.

A. The court requires parties to attend evaluation sessions. The main purposes of an ENE session are to give litigants the opportunity (1) to present their positions; (2) to hear their opponents' view of the issues in dispute; and (3) to hear a neutral assessment of the strengths of each side's case.

B. When a party to a case is not a natural person (*e.g. a corporation*), a person *other than the outside counsel* who has authority to enter stipulations and to bind the party in a settlement must attend.

C. In cases involving insurance carriers, company representatives with settlement authority shall attend.

D. When a party is a unit of government, an agency representative and counsel from the U.S. Attorney's Office, must attend the ENE session.

E. An attorney for each party who has primary responsibility for handling the trial of the matter must attend the ENE session.

F. A party or attorney may be excused from attending an ENE session only after petitioning the referring judge in writing no fewer than ten calendar days before the scheduled ENE session. Such a petition must show that attendance at the ENE session would impose an extraordinary or unjustifiable hardship.

G. **Default.** Subject to the approval of the evaluator, the evaluation session may proceed in the absence of a party, who, after due notice, fails to be present. Sanctions may be imposed by the court on any party who, absent good cause shown, fails to attend or participate in the evaluation session in good faith in accordance with this rule.

83.12-7 Procedures at ENE Sessions.

A. The evaluator has broad discretion to structure the ENE session. She or he will decide the time and place of the session and will structure the session and any follow-up sessions. Rules of evidence shall not apply and there is no formal examination or cross-examination of witnesses.

B. The evaluator shall:

1. Permit each party, or counsel, to make an oral presentation of its position;

2. Help parties identify areas of agreement and enter stipulations, wherever feasible;

3. Assess the relative strengths and weaknesses of the parties' positions and explain the reasons for the assessments;

4. Help parties explore settlement;

5. Estimate, where possible, the likelihood of liability and the range of damages;

6. Help parties develop an information-sharing or discovery plan to expedite settlement discussions or to position the case for disposition by other means; and

7. Determine what, if any, follow-up measures will contribute to case development or settlement (*e.g. written reports; telephone reports; additional ENE sessions; or other forms of ADR ,such as arbitration; mediation; settlement conference; or consent before a magistrate judge*).

C. When an evaluator completes work on a case, she or he will, regardless of case outcome, submit an evaluator assessment form to the ADR clerk.

83.12-8 Confidentiality.

1. Early Neutral Evaluation is regarded as a settlement procedure and is confidential and private. No participant may disclose, without consent of the other parties, any confidential information acquired during the ENE session. There shall be no stenographic or electronic record, e.g., audio or video, of the ENE process.

A. All written and oral communications made in connection with or during any ENE sessions are confidential.

B. No communication made in connection with or during any ENE sessions may be disclosed or used for any purpose in any pending or future proceeding in the U.S. District Court for the Northern District of New York.

C. Privileged and confidential status is afforded all communications made in connection with ENE sessions, including matters emanating from parties and counsel as well as evaluators' comments, assessments, and recommendations concerning case development, discovery and motions. Except for communication between the judge and the evaluator regarding noncompliance with program procedures *as set forth in this rule*, there will be no communications between the court and the evaluator regarding a case that has been designated for evaluation. The parties will be asked to sign an agreement of confidentiality at the beginning of the evaluation session.

D. Parties, counsel, and evaluators may respond to inquiries from authorized court staff which are made for the purposes of program evaluation. Such responses will be kept in strict confidence.

E. The evaluator may not be required to testify in any proceeding relating to or arising out of the matter in dispute. Nor may the evaluator be subject to process requiring disclosure of information or data relating to or arising out of the matter in dispute.

83.12-9 Role of Evaluators.

1. Evaluators may not compel parties or counsel to conduct or respond to discovery or to file motions.

2. Evaluators may not determine the issues in a case or impose limits on pretrial activities.

3. Evaluators, and any parties who encounter a problem during the ENE session and have discussed such problem with the evaluator without obtaining a satisfactory resolution of the matter, shall report to the assigned judge any instances of noncompliance with ENE procedures that, in their view, may disrupt the evaluation process or threaten the integrity of the ENE program.

4. **Immunity**. An evaluator, as well as the ADR Administrator, shall be immune from claims arising out of acts or ommissions incident to service as a court appointee in this Early Neutral Evaluation Program.

83.12-10 Early Neutral Evaluation Report.

1. Immediately upon conclusion of the evaluation session, the evaluator shall file a report with the ADR clerk indicating only whether the case settled, settled in part, or did not settle.

2. In the event the parties reach an agreement to settle the case, the representatives for each party shall promptly notify the ADR clerk and promptly prepare and file the appropriate stipulation of dismissal.

3. If the parties reach a partial agreement to narrow, withdraw, or settle some but not all claims, a stipulation concisely setting forth the resolved claims shall be submitted within five days of the evaluation session. The parties shall be bound by the stipulation.

4. If the Early Neutral Evaluation Session does not conclude in settlement of all the issues in the case, the case will proceed toward trial pursuant to the scheduling orders entered in the case.

83.13 Sealed Matters (Amended January 1, 1999)

Cases may be sealed in their entirety, or only as to certain parties or documents, when they are initiated, or at various stages of the proceedings. The court may on its own motion enter an order directing that a document, party or entire case be sealed. A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reason(s) why the document, party or entire case should be sealed, together with a proposed order for approval by the assigned judge. The proposed order shall include language in the "ORDERED" paragraph stating the referenced document(s) to be sealed and should include the phrase "including this sealing order." Upon approval of the sealing order by the assigned judge, the clerk shall seal the document(s) and the sealing order. A complaint presented for filing with a motion to seal and a proposed order shall be treated as a sealed case, pending approval of the order. Once a document or case is sealed by court order, it shall remain under seal until subsequent order, upon the court's own motion or in response to the motion of a party, is entered directing that the document or case be unsealed.

84.1 Forms.

[Reserved.]

85.1 Title.

[Reserved.]

86.1 Effective Date.

See L.R. 1.1(b).

SECTION XI.
CRIMINAL PROCEDURE

1.1 Scope of the Rules.

These are the Local Rules of Practice for Criminal Cases in the United States District Court for the Northern District of New York. They shall be cited as "**L. R. Cr. P. ____**."

2.1 THROUGH 4.1

[Reserved]

5.1 Notice of Arrest.

(a) Notice of Arrest of Parole, Special Parole, Mandatory Release or Military Parole Violators.

As soon as practicable after taking into custody any person charged with a violation of parole, special parole, mandatory release, or military parole, the United States Marshal shall give written notice to the chief probation officer of the date of the arrest and the place of confinement of the alleged violator.

(b) Notice of Arrest of Probation or Supervised Release Violators.

As soon as practicable after taking into custody any person charged with a violation of probation or supervised release, the United States Marshal shall give written notice to the chief probation officer, the United States attorney, and the United States magistrate judge assigned to the case.

(c) Notice of Arrest by Federal Agencies and Others.

It shall be the duty of the United States Marshal to require all federal agencies and others who arrest or hold any person as a federal prisoner in this district, and all jailers who incarcerate any such person in any jail or place of confinement in this district, to give the United States marshal notice of the arrest or incarceration promptly.

As soon as practicable after receiving notice or other knowledge of any such arrest or incarceration anywhere within the district, the marshal shall give written notice to the United States magistrate judge at the office closest to the place of confinement and to the United States attorney and the pretrial services officer of the date of arrest and the prisoner's place of confinement.

5.1.1 THROUGH 10.1

[Reserved]

11.1 Pleas

(a) In all cases where a presentence report is required, the court will defer its decision to accept or reject any nonbinding recommendation pursuant to Rule 11(e)(1)(B), and the court's decision to accept or reject any plea agreement pursuant to Rules 11(e)(1)(A) and (e)(1)(C) until there has been an opportunity to consider the presentence report unless otherwise stated by the court.

(b) Attorney(s) for defendant(s) indicating a desire to change a previously entered "not guilty" plea shall give notice to the United States attorney and the assigned judge as soon as practicable and, if possible, at least twenty-four (24) hours prior to the commencement of the trial.

(c) For any plea agreement that is to be sealed, the United States attorney shall provide the court with a proposed sealing order.

12.1 Motions and Other Papers.

(a) All criminal motions shall be filed, served and heard as provided for in L.R. 7.1(b)(2) of the Local Rules of Civil Procedure. In addition, no party shall file or serve a memorandum of law which exceeds twenty-five (25) pages in length, unless leave of court is obtained prior to filing. All memoranda of law shall contain a table of contents and, wherever possible, parallel citations.

(b) No discovery motion shall be heard unless the attorney for the moving party files with the court, simultaneously with the filing of the moving papers, an affidavit certifying that the moving party has conferred and discussed in detail with the opposing party the issues between them in a good faith effort to eliminate or reduce the area of controversy and to arrive at a mutually satisfactory resolution.

(c) All motions and other papers filed in a criminal action or proceeding shall show on the first page beneath the file number which, if any, of the speedy trial exclusions under 18 U.S.C. § 3161 are applicable to the action sought or opposed by the motion or other paper and the amount of resulting excludable time.

(d) Adjournment of motions shall be in the discretion of the court. Any party seeking an adjournment from the court shall first contact the opposing attorney. Any application for an adjournment of a motion shall be made in writing and shall set forth the reason for the adjournment.

13.1 Sealed Matters. (Amended January 1, 1999)

Cases may be sealed in their entirety, or only as to certain parties or documents, when they are initiated, or at various stages of the proceedings. The court may on its own motion enter an order directing that a document, party or entire case be sealed. A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reason(s) why the document, party or entire case should be sealed, together with a proposed order for approval by the assigned judge. The proposed order shall include language in the "ORDERED" paragraph stating the referenced document(s) to be sealed and should include the phrase "including this sealing order." Upon approval of the sealing order by the assigned judge, the clerk shall seal the document(s) and the sealing order. A complaint presented for filing with a motion to seal and a proposed order shall be treated as a sealed case, pending approval of the order. Once a document or case is sealed by court order, it shall remain under seal until subsequent order, upon the court's own motion or in response to the motion of a party, is entered directing that the document or case be unsealed.

13.1.1 THROUGH 16.1

[Reserved.]

17.1 Subpoenas.

(a) Production Before Trial.

Except on order of a judge, no subpoena for production of documents or objects shall be sought or issued if the subpoena requests production before trial. See Fed. R. Crim. P. 17(c).

(b) Depositions.

Except on order of a judge, no subpoena for a deposition shall be sought or issued. Fed. R. Crim. P. 15; 17(f).

(c) Subpoenas Requested by Attorneys Appointed Under the Criminal Justice Act.

1. The clerk of the court shall issue subpoenas, signed but otherwise in blank, to an attorney appointed under the Criminal Justice Act. No subpoena so issued shall be served outside the boundaries of this district. Attorneys shall file with the clerk of the court a list of those witnesses who have been subpoenaed. This filing shall constitute certification that the subpoena(s) is necessary to obtain relevant and material testimony and that the witness' attendance is reasonably necessary to the defense of the charge.

2. If a witness is to be subpoenaed outside the boundaries of this district, an ex parte application for issuance of a subpoena shall be made to the appropriate court.

3. The defense attorney shall request service of the subpoenas under this Rule by the United States Marshal. The defense attorney shall obtain an order from the court directing the marshal to serve subpoenas. The marshal shall serve the subpoenas in the same manner as in other cases, except that the name and address of the person served shall not be disclosed without prior authorization of the defense attorney. No fee shall be allowed for private service of any subpoena issued under this Rule unless express advance authorization is obtained by written order of the court.

4. As authorized by Fed. R. Crim. P. 17(b), the court orders that the costs for service of process and payment of witness fees for each witness subpoenaed under the Rule shall be paid in the same manner in which similar costs and fees are paid in the case of a witness subpoenaed on behalf of the government.

17.1.1 Pretrial Conference.

At the request of any party or upon the court's own motion, the assigned judge may hold one or more pretrial conferences in any criminal action or proceeding. The agenda at the pretrial conference shall consist of any of the following items, so far as applicable, and such other matters designated by the judge as may tend to promote the fair and expeditious trial of the action or proceeding:

(a) Production of witness statements under the Jenks Act, Title 18 U.S.C. § 3500 or Fed. R. Crim. P. 26.2;

(b) Production of grand jury testimony of witnesses intended to be called at trial;

(c) Production of exculpatory or other evidence favorable to the defendant on the issue of guilt or punishment;

(d) Stipulation of facts which may be deemed proved at the trial without further proof by either party, and limitation of witnesses;

(e) Appointment by the court of interpreters under Fed. R. Crim. P. 28;

(f) Dismissal of certain counts and elimination from the case of certain issues; e.g., insanity, alibi, and statute of limitations;

(g) Severance of trial as to any co-defendant or joinder of any related case;

(h) Identification of informers, use of lineup or other identification evidence, use of evidence of prior convictions of defendant or any witness, etc.;

(i) Pretrial exchange of lists of witnesses intended to be called in person or by deposition to testify at trial, except those who may be called only for impeachment or rebuttal;

(j) Pretrial exchange of documents, exhibits, summaries, schedules, models, or diagrams intended to be offered or used at trial;

(k) Pretrial resolution of objections to exhibits or testimony to be offered at trial;

(l) Preparation of trial briefs on controversial points of law likely to arise at trial;

(m) Scheduling of the trial and of witnesses;

(n) Settlement of jury instructions, voir dire questions, and challenges to the jury; and

(o) Any other matter which may tend to promote a fair and expeditious trial.

18.1 THROUGH 19.1

[Reserved]

20.1 Transfer from the District for Plea and Sentence.

Upon the transfer under Fed. R. Crim. P. 20 of an information or indictment charging a minor offense, the case shall be referred immediately to a magistrate judge who shall take the plea and impose sentence in accordance with the rules for the trial of minor offenses if, pursuant to 18 U.S.C. § 3401, the defendant consents in writing to this procedure.

21.1 THROUGH 29.1.

[Reserved]

30.1 Jury Instructions.

Proposed jury instructions shall be submitted to the court in accordance with the time frames set forth in the Criminal Pretrial Scheduling Order issued at the time of arraignment. All proposed jury instructions shall be accompanied by citations to relevant authorities.

31.1 [Reserved]

32.1 Presentence Reports.

(a) Order for Presentence Report.

Sentences will be imposed without unnecessary delay following the completion of the presentence investigation and report. This court adopts the use of a uniform presentence order. The uniform presentence order shall contain the following: (1) date by which the presentence report is to be made available; (2) the deadlines for filing objections, if any, to the presentence report; (3) the deadlines for filing presentence memoranda, recommendations and motions; and, (4) a date for sentencing.

(b) Presence of Counsel.

On request, the defendant's counsel is entitled to notice and a reasonable opportunity to attend any interview of the defendant by a probation officer in the course of a presentence investigation. It shall be incumbent upon the defendant's counsel to advise the Probation Office within two (2) business days of the date that the presentence report is ordered that counsel wishes to be present at any interview with the defendant.

(c) Disclosure Procedures.

1. The Presentence Report is confidential and should not be disclosed to anyone other than the defendant, the attorney for the defendant, the United States attorney and the Bureau of Prisons without the consent of the court.

2. The court directs the probation officer not to disclose the probation officer's confidential recommendation to any of the parties.

3. All counsel are admonished that the time limits as set forth in the Uniform Presentence Order shall be adhered to in order to allow sufficient time for the court to read and analyze the material which will be submitted.

4. The court, on motion of either party, or of the probation office, may modify the time requirements set forth in the Uniform Presentence Order subject to the provisions of Title 18 U.S.C. Section 3552(d).

(d) Responsibilities of the Clerk and Probation Office.

1. Within three (3) business days after sentencing, the clerk shall serve a copy of the judgment upon the parties and the United States Marshal. The clerk shall also provide the probation office with three (3) certified judgment orders along with the court's statement of reasons and the court's findings on unresolved objections and copies of other documents pertinent to the sentencing placed in the record during the sentencing hearing.

2. Copies of the Presentence Report provided to the Court of Appeals for the Second Circuit by the clerk shall include the court's finding on unresolved objections.

33.1 THROUGH 43.1.

[Reserved.]

44.1 Right to and Assignment of Counsel.

If a defendant, appearing without an attorney in a criminal proceeding, desires to obtain an attorney, a reasonable continuance for arraignment, not to exceed one week at any one time, shall be granted for that purpose. If the defendant requests appointment of an attorney by the court, or fails for an unreasonable time to appear with an attorney, the assigned judge or magistrate judge shall, subject to the applicable financial eligibility requirements, appoint an attorney unless the defendant, electing to proceed without an attorney, waives the right to an attorney in a manner approved by the judge or the magistrate judge. In that case, the judge or magistrate judge shall, nevertheless, designate an attorney to advise and assist the defendant to the extent the defendant might thereafter desire. Appointment of an attorney shall be made in accordance with the Plan of this court adopted pursuant to the Criminal Justice Act of 1964 and on file with the clerk.

44.2 Appearance and Withdrawal of Counsel.

(a) An attorney appearing for a defendant in a criminal case, whether retained or appointed, shall promptly file with the clerk a written appearance. An attorney who has appeared shall thereafter withdraw only upon notice to the defendant and all parties to the case and an order of the court finding that good cause exists and granting leave to withdraw. Failure of a defendant to pay agreed compensation shall not be deemed good cause unless otherwise determined by the court.

(b) Unless leave is granted, the attorney shall continue to represent the defendant until the case is dismissed, the defendant is acquitted or convicted, or the time for making post-trial motions and for filing notice of appeal, as specified in Fed. R. App. P. 4(b), has expired. If an appeal is taken, the attorney shall continue to serve until leave to withdraw is granted by the court having jurisdiction of the case or until another attorney has been appointed by that court as provided in 18 U.S.C. § 3006A and other applicable provisions of law.

45.1 Excludable Time under the Speedy Trial Act.

No continuance or extension shall be granted under the Speedy Trial Act unless a motion or stipulation is submitted that recites the appropriate exclusionary provision of the Speedy Trial Act, 18 U.S.C. § 3161. In addition, the motion or stipulation shall be accompanied by an affidavit of facts upon which the court can base a finding that the requested relief is warranted. The attorneys shall also submit a proposed order setting forth the time to be excluded and the basis for its exclusion. If the exclusion affects the trial date of the action, the stipulation or proposed order shall have a space for the court to enter a new trial date in accordance with the excludable time period. All requests for a continuance or extension that do not comply with this Rule shall be disallowed by the court.

46.1 Pretrial Services and Release on Bail.

(a) Pretrial Services.

Pursuant to the Pretrial Services Act of 1982, 18 U.S.C. §§ 3152 -3155, the court authorizes the United States Probation Office and/or Pretrial Services Office of the Northern District of New York to perform all services as provided by the Act.

1. Pretrial Service Officers shall conduct an interview and investigate each individual charged with an offense and shall submit a report to the court as soon as practicable. The judicial officer setting conditions of release or reviewing conditions previously set shall receive and consider all reports submitted by Pretrial Service Officers, the Government and defense counsel.

2. Pretrial service reports shall be made available to the attorney for the accused and the attorney for the Government and shall be used only for the purpose of fixing conditions of release, including bail determinations. Otherwise, the reports shall remain confidential, as provided in 18 U.S.C. § 3153, subject to the exceptions provided therein.

3. Pretrial Service Officers shall supervise persons released on bail at the discretion of the judicial officer granting the release or modifications of the release.

47.1 Motions.

See L.R. Cr. P. 12.1.

48.1 THROUGH 56.1.

[Reserved]

57.1 Criminal Designation Forms.

The United States attorney shall file a criminal designation form with each new indictment or information. On this sheet the United States attorney shall indicate the name and address of the defendant and the magistrate judge case number, if any. The criminal designation form also shall

contain any further information that is deemed pertinent by the court or the clerk. A copy of the designation form is included at Appendix Cto the Rules.

57.2 Release of Bond.

When a defendant has obtained release by depositing a sum of money or other collateral as bond as provided by 18 U.S.C. § 3142, the payee or depositor shall be entitled to a refund or release thereof when the conditions of the bond have been performed and the defendant has been discharged from all obligations thereon. Defendant's attorney shall prepare a motion and proposed order for the release of the bond and submit the motion to the court for the judge's signature. Unless otherwise specified by court order, or upon such proof as the court shall require, all bond refunds shall be disbursed to the individual whose name appears on the court's receipt for payment.

58.1 Magistrate Judges.

(a) Powers and Duties.

1. A full-time magistrate judge is authorized to exercise all powers and perform all duties permitted by 28 U.S.C. § 636(a), (b), and (c), and any additional duties that are not inconsistent with the Constitution and laws of the United States. A part-time magistrate judge is authorized to exercise all of those duties, except those permitted under 28 U.S.C. § 636(c), and any additional duties not inconsistent with the Constitution and laws of the United States.

2. A magistrate judge is also authorized to:

(A) Conduct removal proceedings and issue warrants of removal in accordance with Fed. R. Crim. P. 40;

(B) Conduct extradition proceedings in accordance with 18 U.S.C. § 3184;

(C) Impanel and charge a Grand Jury and Special Grand Juries and receive grand jury returns in accordance with Fed. R. Crim. P. 6(f);

(D) Conduct voir dire and select petit juries for the court;

(E) Accept petit jury verdicts in civil cases in the absence of a judge;

(F) Conduct necessary proceedings leading to the potential revocation of probation;

(G) Order the exoneration or forfeiture of bonds;

(H) Exercise general supervision of the criminal calendar of the court, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges;

(I) Exercise all the powers and duties conferred or imposed upon United States commissioners by law or the Federal Rules of Criminal Procedure;

(J) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146, and take acknowledgments, affidavits, and depositions;

(K) Determine motions pursuant to 18 U.S.C. § 4241(a) for a hearing to determine the mental competency of the defendant and, if necessary, order that a psychiatric or psychological examination of the defendant be conducted pursuant to 18 U.S.C. § 4241(b); and

(L) Conduct hearings to determine the mental competency of the defendant pursuant to 18 U.S.C. § 4247(d) and issue a report and recommendation to the assigned district judge pursuant to 28 U.S.C. § 636(b).

(b) Felonies.

1. On the return of an indictment or the filing of an information, felony matters shall be assigned by a judge of the court to a magistrate judge for the purpose of arraignment, for the determination and fixing the conditions of pretrial release, and for the assignment of an attorney to the extent authorized by law.

(c) Misdemeanors.

1. A magistrate judge is authorized to conduct trials of persons accused of misdemeanors committed within this district in accordance with 18 U.S.C. § 3401, order a presentence investigation report on any such persons who are convicted or plead guilty or nolo contendere, and sentence such persons.

2. Any person charged with a misdemeanor may, however, elect to be tried before a judge of the district court for the district in which the offense was committed. The magistrate judge shall carefully advise defendants of their right to trial, judgment, and sentencing by a judge of the district court and their right to a trial by jury before a district judge or magistrate judge. The magistrate judge shall not proceed to try the case unless the defendant, after such explanation, files a written consent to be tried before the magistrate judge. That consent specifically must waive trial, judgment, and sentencing by a judge of the district court.

3. Procedures on appeal to a district judge in a consent case pursuant to 18 U.S.C. § 3401 shall be as provided in Fed. R. Crim. P. 58(g). Unless otherwise ordered:

(A) The appellant's brief shall be filed within ten (10) days following the filing of the notice of appeal;

(B) The appellee's brief shall be filed within ten (10) days following submission of the appellant's brief;

(C) No oral argument shall be permitted.

58.2 Forfeiture of Collateral in Lieu of Appearance.

The U.S. District Court for the Northern District of New York has adopted in accordance with Fed.R.Crim.P. 58(d)(1) the schedule for violations as set forth in General Order #39. Copies of General Order #39 may be obtained from the office of the clerk or on the court's web page at "www.nynd.uscourts.gov."

59.1 THROUGH 60.1.

[Reserved]

SECTION XII.
LOCAL RULES OF PROCEDURE FOR ADMIRALTY AND MARITIME CASES

Rule A Scope of Rules.

These rules apply to the procedure for claims governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Rules of Civil Procedure for the United States District Courts.

Rule B Attachment and Garnishment.

1. In actions in personam where the debts, credits or effects named in any process of maritime attachment and garnishment are not delivered up to the marshal by the garnishee or are denied by the garnishee to be the property of the defendant, it shall be sufficient service of such process to leave a copy thereof with the garnishee, or at their usual residence or place of business, with notice of the property attached. Upon due return by the marshal, the plaintiff, on proof satisfactory to the court that the property belongs to the defendant(s), shall proceed to a hearing and final judgment in the cause.

2. In actions in rem, process against freight or proceeds of property in possession of any person shall be served in like manner.

Rule C Actions In Rem - Special Provisions.

1. A summons issued pursuant to Rule C(3) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure for the United States District Courts, dealing with freight or the proceeds of property sold or other intangible property, shall direct the person having control of the funds, at a date fixed, which shall be at least ten (10) days after service unless the court, for good cause shown, shortens the period, to show cause why the funds should not be paid into court to abide the judgment.

2. The notice required by Rule C(4) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure for the United States District Courts shall be published at least once and shall contain the fact and date of the arrest, the title of the cause, the nature of the action, the amount demanded, the name of the marshal, the name and address of the attorney for the plaintiff, and a statement that claimants shall file their claims with the clerk of this court within ten (10) days after the arrest or within

such additional time as shall be allowed by the court, and shall serve their answers within twenty (20) days after the filing of their claims. The notice shall also state that all interested persons shall file claims and answers within the times so fixed because otherwise default shall be noted and condemnation ordered.

3. Unless otherwise ordered or as provided by law, notice of sale of the property after condemnation in suits in rem shall be published daily for at least six (6) days prior to the sale.

4. In suits in rem when the res is in the custody of the collector of customs, the marshal shall, in addition to the publication of the process provided for by Rule C(4), deliver a copy of the process to the collector together with notice of the arrest of the property therein described and require the collector to detain such property in custody until further order of the court. If the collector is not found within the district, then a copy of such process and notice shall be delivered to the custodian of the property within the district. Notice of the arrest shall also be given to the owner or the owner's agent if found within the district and, if the owner or the agent cannot be found within the district or if such owner or agent is unknown, then the publication of such notice shall be deemed sufficient, unless the court directs otherwise.

Rule D Possessory, Petitory, and Partition Actions.

No complaint in an action provided for in Rule D or Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure for the United States District Courts shall be filed, except on behalf of the United States, or upon the special order of the court, unless the party offering the same shall file a stipulation in the sum of $250 for costs, with the condition that the principal shall pay all costs awarded by the court, or any appellate court, against the principal. In lieu of a stipulation, the party shall deposit the necessary amount in the registry of the court.

Rule E Actions In Rem and Quasi In Rem - General Provisions.

1. Unless allowed by the court, no process in rem or quasi in rem shall issue in forma pauperis suits except on proof of twenty-four (24) hours notice to the owner of the res or the owner's agent of the filing of the complaint.

2. All stipulations shall contain the consent of the stipulators that if the party for whose benefit the stipulation is filed recovers, the judgment shall be entered against that party for an amount not exceeding the amount named in such stipulation and that execution shall issue against that goods, chattels, lands, and tenements or other real estate.

3. Whenever the owner or owners of any vessel shall execute and deliver to the clerk a general bond or stipulation as provided by Rule E(5)(b) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure for the United States District Courts, conditioned to answer the judgment of the court in all or any actions that shall be brought thereafter in the court in which the vessel is attached or arrested, notice of the process shall be given to the principal and surety

or sureties in the bond by service of a copy by the marshal on each of the persons named in the bond. Failure to receive the notice shall in no way affect liability under the bond. All other notices shall be given and the cause proceed as if such vessel had been taken into actual custody.

4. Stipulators shall justify, on notice before the clerk, a commissioner or a notary public, who, if required to do so by the opposite party, shall examine the sureties under oath as to their sufficiency and annex their depositions to the bond or stipulation. In all cases in which the surety on bonds or stipulations is not a corporate surety holding a certificate of authority of the Secretary of the Treasury and the bond or stipulation is approved by the attorneys, reasonable notice of application for approval by a judge shall be given.

5. Where property is arrested or attached, any person claiming an interest in the property arrested or attached may, upon evidence showing any improper practice or manifest want of equity on the part of the plaintiff, be entitled to an order requiring the plaintiff to show cause why the arrest or attachment should not be vacated. This Rule shall have no application to suits for seamen's wages when process is issued on a certificate of sufficient cause filed pursuant to 46 U.S.C. §§ 603 and 604.

6. When the res remains in the custody of the marshal, the cause shall not be heard until after publication of notice of arrest shall have been made in that cause or in some other pending cause in which the property is held in custody. No final judgment shall be entered ordering the condemnation and sale of the property, not perishable, arrested under process in rem, unless publication of notice of arrest in that cause shall have been duly made.

7. No sale of the res shall be ordered by interlocutory judgment before the sum chargeable thereon is fixed by the court, except by consent of the parties or by order of the court.

8. When any money shall come into the hands of the marshal under, or by virtue of, any order or process of the court, the marshal shall promptly present to the clerk a bill of charges thereon and a statement of the time of receipt of the money. Upon the filing of the statement and the taxation of the charges, the marshal promptly shall pay to the clerk the amount of the money less appropriate charges as taxed. An account of all property sold under the order or judgment of this court shall be returned by the marshal and filed in the clerk's office with the execution or other process under which the sale was made. Wharfage, storage and like charges that accrue while the vessel or other property is in the marshal's custody shall not be included in the marshal's bill of charges, except by consent of all interested parties, lienors who have appeared, or their attorneys. If such charges are not consented to in the marshal's bill, they shall be claimed by petition filed, unless otherwise ordered, not later than ten (10) days after the sale of the vessel or other property, against the proceeds or against any party claimed to be responsible therefor. The wharfinger or other person entitled to such charges shall be given notice of settlement of the final judgment and the order of distribution of proceeds.

9. Property seized by the marshal shall be released as follows:

(A) In suits for sums certain, by paying into court the amount alleged to be due, with interest as claimed therein, up to the first day of the month next succeeding the last day to answer the complaint or next succeeding the payment into court, whichever is later; or by filing an approved stipulation for such alleged amount, with interest, and by payment into court of the costs of officers of the court already accrued and by depositing the sum of **$250** to cover further costs; or in lieu of such deposit for costs, giving a stipulation with the condition that the principal shall pay all costs awarded by the court and, in case of appeal, by any appellate court;

(B) By an order duly entered by the clerk on the written consent of the attorney for the party on whose behalf the property is detained.

Rule F: Limitation on Liability.

1. In proceedings in rem, claims upon the proceeds of the sale of property under a final decree, except for seamen's wages, shall not be admitted on behalf of lienors who file complaints or petitions after the sale to the prejudice of lienors who filed complaints or petitions before the sale but shall be limited to the remnants and surplus, unless for cause shown it shall be ordered otherwise.

APPENDIX to the RULES[2]

(Amended January 1, 1999)

[2] The documents contained in the Appendix to the Rules shall serve as a reference only. The General Orders, Pretrial Orders and Forms contained in the Appendix may be amended at the discretion of the Court.

A P P E N D I X A

PRETRIAL/SETTLEMENT CONFERENCE STATEMENT

PRETRIAL & SETTLEMENT CONFERENCE STATEMENT

(NOT FOR PUBLIC VIEW)

**** THIS DOCUMENT WILL BE PROVIDED TO THE CLERK AND NOT FILED IN ACCORDANCE WITH L.R. 5.7**

CASE NAME: _____ **vs.** _____

ACTION NO.: _____

ASSIGNED JUDGE: _____

ASSIGNED MAGISTRATE JUDGE: _____

Each Attorney is required to submit the following information on behalf of his or her client in short, concise form, in order to present a brief overview of the facts of the case. This information will be used by the Court during the scheduled final pretrial/settlement conference and therefore **must be provided to the Court five (5) days in advance of the conference date.**

PARTY/PARTIES REPRESENTED;

_____

_____

_____

_____

(use additional page if necessary)

A BRIEF PERSONAL HISTORY REGARDING YOUR CLIENT(S);

_____

_____

_____

_____

(use additional page if necessary)

A BRIEF STATEMENT OF THE FACTS OF THE CASE;

_____

_____

_____

_____

(use additional page if necessary)

A BRIEF STATEMENT OF THE CLAIMS AND DEFENSES, i.e., STATUTORY OR OTHER GROUNDS UPON WHICH THE CLAIMS ARE FOUND; AND EVALUATION OF THE PARTIES' LIKELIHOOD OF PREVAILING ON THE CLAIMS AND DEFENSES; AND A DESCRIPTION OF THE MAJOR ISSUES IN DISPUTE; SET FORTH ANY DEMANDS OR OFFERS FOR SETTLEMENT

_____

_____

_____

_____

(use additional page if necessary)

A SUMMARY OF THE PROCEEDINGS TO DATE;

_____

_____

_____

_____

(use additional page if necessary)

AN ESTIMATE OF THE COST AND TIME TO BE EXPENDED FOR FURTHER DISCOVERY, PRETRIAL AND TRIAL;

_____

_____

_____

_____

(use additional page if necessary)

A BRIEF STATEMENT OF THE FACTS AND ISSUES UPON WHICH THE PARTIES AGREE;

_____

_____

_____

_____

(use additional page if necessary)

ANY DISCREET ISSUES WHICH, IF RESOLVED, WOULD AID IN THE DISPOSITION OF THE CASE;

_____

_____

_____

_____

(use additional page if necessary)

THE RELIEF SOUGHT;

_____

_____

_____

(use additional page if necessary)

THE PARTIES' POSITION ON SETTLEMENT, INCLUDING PRESENT DEMANDS AND OFFERS, THE HISTORY OF PAST SETTLEMENT DISCUSSIONS, OFFERS AND DEMANDS;

_____

_____

_____

_____

(use additional page if necessary)

PREFERRED TRIAL LOCATION, APPROXIMATE LENGTH OF TRIAL, AND WHETHER TRIAL IS JURY OR NON-JURY;

_____

_____

The Court requires that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters identified by the Court for discussion at the conference and all reasonably related matters including settlement authority.

Copies of the settlement statement shall be served upon the other parties at the time the statement is provided to the Court. This document will not be filed and will not be made available for public view.

Should the case be settled in advance of the pretrial/settlement conference date, counsel are required to notify the court immediately. Failure to do so could subject counsel for all parties to sanctions.

Signature of Counsel: _____

Dated: _____

A P P E N D I X B

ATTORNEY REGISTRATION FORM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ATTORNEY REGISTRATION FORM

This form must be completed in accordance with L.R. 83.1(h).

TITLE: Mr._____ Mrs._____ Miss_____ Ms._____

NAME: (Last)_____ **(First)**_____ **Middle)**_____

BUSINESS TELEPHONE NUMBER: ( ) _____

FACSIMILE NUMBER: ( ) _____

FIRM NAME: _____

OFFICE ADDRESS: _____

_____

E-MAIL ADDRESS: _____

List below the Bars of all states, territories, districts, commonwealths or possessions or other courts of the United States to which you are admitted and the dates of such admissions.

BAR	**DATE ADMITTED**
_____	_____
_____	_____
_____	_____

TYPE OF ADMISSION TO THIS DISTRICT:

_____ PERMANENT **DATE OF ADMISSION:**_____

_____PRO-HAC VICE ADMISSION **DATE OF ADMISSION:**_____

For Pro Hoc Vice admissions -
please note the case number that you were admitted on:_____

DATED:_____ **SIGNATURE:**_____

NOTE: A supplemental statement of any changes in the foregoing information shall be filed within ten (10) days of such change.

Please check if this is a supplemental statement: (_____)

&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&

For Office Use Only: (Assigned Bar Roll No: _____)

A P P E N D I X C

CRIMINAL CASE DESIGNATION FORMS

❑ **COMPLAINT** ❑ **INFORMATION** ❑ **INDICTMENT** ❑ **SUPERSEDING**

Place of Offense:

County:_____

Related Case Information:

Magistrate Judge Case Number:_____
Rule 20 / Rule 40 from District of_____
Superseding Indictment_____ Docket Number _____
Same Defendant_____ New Defendant _____

Is the Related Case Sealed?

❑ **YES** - ❑ **NO** **(If related case is no longer sealed please provide unsealing order)**

Defendant Information:

Juvenile: ❑ **YES** - ❑ **NO** **If YES,** ☛ **Please Include A Sealing Order (18 U.S.C. 5038)**

Defendant Name _____
Alias Name _____
Address _____
_____

Birth date _____ SS#_____ Sex_____ Race_____ Nationality_____

Interpreter: ❑ **YES** - ❑ **NO** **If YES,** ☛ **List Language and/or Dialect:**_____

Location Status:

Arrest Date _____

❑ Already in Federal Custody as of _____ in _____
❑ Already in State Custody
❑ On Pretrial Release

Is the Accusatory Instrument to be Sealed ? ❑ **YES** - ❑ **NO** **If YES** ☛ Provide Sealing Order.

U.S. Attorney Information:

Assistant United States Attorney _____ Bar #_____

Dated:_____ Office:_____

A P P E N D I X D

PRO BONO FUND VOUCHER FORM

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

PRO BONO FUND VOUCHER
AND REQUEST FOR REIMBURSEMENT

I, _____, duly appointed as counsel pro bono to represent _____ in the matter of _____v_____

Civil Action No. _____cv_____, hereby request reimbursement pursuant to Local Rule 83.3 for expenses incurred in the representation of my pro bono client in the amount of $_____.

I certify that the expenses, a detailed copy of which are attached hereto, are reasonable and necessary. I further understand that absent prior approval of the court, cumulative expenses in this matter will not exceed $1,200.00.

Dated:_____,19____.

Counsel Pro Bono:_____

The above application of counsel pro bono appointed by the undersigned is fair and reasonable and payment is requested from the Northern District of New York's Pro Bono Fund.

Dated:_____,19____.

Appointing Judge:_____

IT IS SO ORDERED.

Dated:_____,19____. **_____**

Frederick J. Scullin, Jr.

At _____,New York **Chief U.S. District Judge**

A P P E N D I X E

GENERAL ORDER #40

Pursuant to General Order 40, the Northern District has elected not to adopt the suggested modifications of Fed. R. Civ. P. 26(a)(1),(2) and (3) (insofar as it provides for mandatory disclosures without request), 30(a)(2)(A)(insofar as it limits the number of depositions), 31(a)(2)(A)(insofar as it limits the number of depositions upon written questions), and 33(a)(insofar as it limits the number of interrogatories). If, however, Congress revokes the ability of the District Court to opt out of these suggested changes, General Order 40 shall be abrogated accordingly and the respective Federal Rule of Civil Procedure shall govern.